# STATE OF NEW YORK

8474

# IN SENATE

February 2, 2024

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

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:**

THE CITY OF STATEN ISLAND ACT

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17-001 Effective date.

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

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

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

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

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

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

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

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

2. The legislature further finds, determines and declares:

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

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

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

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

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

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

3. The legislature further finds, determines and declares:

(a) that by virtue of the authority vested in the legislature by the New York State Constitution to provide for the "creation and organization of local governments" as well as for "effective local self-government" and "intergovernmental cooperation," the interests of the people of the state would be served and promoted by the separation and creation of a new municipality to be called the city of Staten Island; and

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

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

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

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

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

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

4. "Transition period" shall mean the period of time between the date of incorporation and the first of July in the second year next succeeding the year in which this act shall have become a law from and including the date of incorporation until the date of establishment.

5. "Preceding municipality" shall mean the city government for the geographical area of the city of Staten Island existing immediately prior to the incorporation of the city of Staten Island and which shall exercise full municipal powers and duties for such area during the transition period.

6. "Judiciary transition period" shall mean the period of time between the date of incorporation of the city of Staten Island and December thirty-first in the fifth year following such incorporation or until the provisions of article 5-C of the judiciary law are specifically superseded by state law. At the conclusion of the judiciary transition period, the city of Staten Island shall be authorized to exercise full judicial authority over the citizens and territory of the city of Staten Island.

§ 1-004. Incorporation. The city of Staten Island is hereby incorporated on the first of January next succeeding the date on which this act shall have become a law. The boundaries of such city shall be as described in section 1-02 of the charter of the city of Staten Island as set forth in section 2-001 of this act. During the transition period such city shall not have the powers or duties of a municipality except those which are provided for pursuant to this act to provide for the transition of government and the establishment of such city. During the transition period, the preceding municipality shall possess and exercise full municipal powers and duties for the area to become the city of Staten Island except for those powers and duties as may be provided by the provisions of this act. Powers and duties of the city of Staten Island not yet in effect shall remain with the preceding municipality until such time as those powers and duties are transferred to the city of Staten Island pursuant to the provisions of this act. Except as otherwise provided by this act, full powers and duties shall devolve to the city of Staten Island on the first of July in the second year next succeeding the date on which this act shall have become a law. The following powers, duties and functions regarding the judiciary during the judicial transition period and other matters as jointly determined by the city of Staten Island and the preceding municipality in accordance with the provisions as outlined elsewhere in this act, will be shared by both municipalities. The city of Staten Island shall be established on the first of July in the second year next succeeding the date on which this act shall have become a law, on which date the city of Staten Island shall possess full municipal powers and duties as are provided under law and the preceding municipality shall cease to possess municipal powers and duties regarding the city of Staten Island.

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

## Charter of the City of Staten Island

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# CHARTER OF THE CITY OF STATEN ISLAND

## Preamble

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

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

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

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

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

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

The City of Staten Island can serve as a model for the promotion of the common welfare, the guarantor of individual liberties and the guardian of the social, spiritual, economic and cultural concerns of its inhabitants.

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

## Chapter 1
## General Provisions

§ 1-01. Incorporation.

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

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

§ 1-02. Boundaries.

The City of Staten Island shall consist of all the territory known as Richmond county, which shall contain all that part of the state, bounded on the north by the center line of the Kill Van Kull which center line would extend easterly to the extension of the center line of North River and Upper New York Bay, then on the east by the extension of the aforementioned center line of Upper New York Bay running southerly through the Narrows between Richmond county and Kings county and continuing through Lower New York Bay to the Atlantic Ocean, and bounded on the south east by the Atlantic Ocean to the boundary of the state of New York and the state of New Jersey at Raritan Bay, and on the west following the center line of the Kill Van Kull and the center line of the Arthur Kill which is the boundary between the state of New York and the state of New Jersey, including Staten Island, Island of Meadows, Pralls Island, Hoffman Island, Swinburne Island, that part of Shooters Island within the state of New York, and all other islands or parts thereof situated within the aforedescribed bounds.

## Chapter 2
## Powers of the City

§ 2-01. Powers.

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

§ 2-02. Purposes.

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

## Chapter 3
## Mayor

§ 3-01. Executive power.

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

§ 3-02. Election; term.

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

§ 3-03. Qualifications.

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

§ 3-04. Deputy mayor.

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

§ 3-05. Removal of the mayor.

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

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

§ 3-06. Succession.

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

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

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

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

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

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

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

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

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

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

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

§ 3-08. General Powers.

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

(b) The mayor shall have the power:

1. to supervise, direct and control, subject to law, the administrative services and departments of government;

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

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

4. to prepare and submit a budget message and an expense budget and capital budget annually to the council for its consideration and necessary action in accordance with this charter and the city code;

5. to call special sessions of the council;

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

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

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

9. to delegate to or withdraw from any member of said office, specified functions, powers and duties, except the mayor's power to act on local laws or resolutions of the council or to appoint or remove officials;

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

(c) Notwithstanding any other provision of law, the mayor shall have the powers of a finance board under the local finance law and may exercise such powers without regard to any provision of law prescribing the voting strength required for a resolution or action of such finance board, provided, however, that whenever the mayor determines that obligations should be issued and the amount thereof, the mayor shall certify

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

## Chapter 4
## Common Council

§ 4-01. Legislative power.

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

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

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

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

§ 4-03. Qualifications.

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

§ 4-04. Organization.

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

§ 4-05. Vacancy.

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

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

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

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

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

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

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

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

§ 4-06. Powers.

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

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

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

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

3. to designate an acting mayor within seventy-two hours of the occurrence of a vacancy in both the office of mayor and the office of deputy mayor;

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

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

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

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

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

9. to exercise other powers conferred by this charter.

§ 4-07. Clerk of the council.

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

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

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

§ 4-08. Investigations.

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

§ 4-09. Local laws.

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

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

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

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

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

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

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

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

§ 4-10. Districting commission.

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

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

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

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

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

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

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

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

§ 4-11. Powers of the districting commission.

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

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

§ 4-12. Community advisory boards.

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

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

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

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

## Chapter 5
## Comptroller

§ 5-01. Election; term.

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

§ 5-02. Powers and duties.

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

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

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

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

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

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

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

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

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

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

§ 5-03. Qualifications.

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

§ 5-04. Deputy comptroller.

The comptroller shall appoint and at pleasure remove a deputy comptroller who in case of a vacancy in the office or in case of the illness or inability of the comptroller to act shall have the same powers and perform the same duties as the comptroller. The qualifications of the nominee for the position of deputy comptroller shall be submitted to the council by the comptroller and the nominee may be requested to appear in person before the council to respond to questions concerning those qualifications.

§ 5-05. Vacancy.

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

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

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

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

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

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

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

## Chapter 6
## The Budgetary Process: Expense and Capital

§ 6-01. Budgetary responsibilities of the mayor.

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

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

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

§ 6-02. Spending pursuant to appropriations.

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

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

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

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

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

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

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

§ 6-03. Fiscal year.

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

§ 6-04. Budgetary process and timeline.

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

(a) Ten-year capital strategy.

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

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

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

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

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

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

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

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

(d) Report of the comptroller on capital debt and obligations: December first.

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

(f) Preliminary certificate of the mayor on capital debt and obligations to the council and comptroller: January sixteenth. At any time up to the submission of the executive capital budget to the council, the mayor may amend such preliminary certificate.

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

(h) Finance commissioner's estimate of assessed valuation, and statement of taxes due and uncollected submitted to the mayor and council: February fifteenth.

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

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

(k) Council committees' preliminary budget hearings on:

1. program objectives and fiscal implications of preliminary budget, draft ten year capital strategy, city planning director's report on the draft strategy, and the status of capital projects and expense appropriations previously authorized; and

2. recommendations for any changes in the unit of appropriation structure, or any change in the memorandum of understanding of the terms and conditions regarding such units of appropriations; and

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

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

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

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

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

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

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

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

4. If a capital budget and a capital program have not been adopted by the fifth of June the unutilized portion of all prior capital appropriations shall be deemed reappropriated.

(p) Veto of the mayor.

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

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

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

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

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

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

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

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

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

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

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

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

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

(r) Fixing of tax rates.

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

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

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

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

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

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

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

(t) Appropriation, certification and publication.

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

(u) Council completion of assessment rolls.

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

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

(v) Collection of real property tax.

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

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

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

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

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

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

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

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

(c) Each proposed unit of appropriation shall represent the amount requested for personal service or for other than personal service for a particular program, purpose, or activity within an agency, department, organization or institution; provided, however, that a single unit of appropriation for personal service or a single unit of appropriation for other than personal service may represent the amount requested for more than one particular program, purpose, or activity for an agency, department, organization or institution if the council has adopted, on the recommendation of the mayor, or if the council has adopted on its own initiative and the mayor has approved, a resolution setting forth the names, and a statement of the programmatic objectives, of each program, purpose, or activity for an agency, department, organization, or institution to be included in such a single unit of appropriation. Copies of such resolutions must be included as an appendix to any preliminary budget, executive budget, and adopted budget to which they apply. If, in accordance with such a resolution, a proposed unit of appropriation for other than personal service shall represent the total amount

requested for other than personal service for more than one proposed unit of appropriation for personal service, the amount of such unit of appropriation for other than personal service which is allocable to each unit of appropriation for personal service shall be set forth for informational purposes at the end of each such unit of appropriation for personal service. If, in accordance with such a resolution, a proposed unit of appropriation for personal service shall represent the total amount requested for personal service for more than one proposed unit of appropriation for other than personal service, the amount of such unit of appropriation for personal service which is allocable to each unit of appropriation for other than personal service shall be set forth for informational purposes at the end of each such unit of appropriation for other than personal service.

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

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

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

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

§ 6-06. Preliminary expense budget.

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

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

(a) There shall be included in the budget:

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

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

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

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

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

(iv) the several amounts which are payable from sources other than the real estate tax levy, provided however that amounts appropriated pursuant to chapter nine of this charter which are allocable to a particular program, purpose, activity or institution, shall be included for informational purposes only;

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

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

(vii) a reserve for unanticipated contingencies.

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

3. The terms and conditions under which appropriations shall be administered.

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

(c) The budget message, which shall not be deemed a part of the budget, shall include:

1. an explanation;

2. itemized information and supporting schedules;

3. recommendations for any changes in revenue sources and fiscal operations;

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

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

6. a four-year financial plan, containing:

(i) for each agency, for all existing programs, forecasts of expenditures for the ensuing fiscal year and the succeeding three fiscal years at existing levels of service;

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

(iii) for each new or expanded program, an indication of when such program is projected to be fully implemented and a forecast of the annual recurring costs for such program or program expansion after it is fully implemented;

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

8. an explanation of principal changes in performance goals and indicators;

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

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

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

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

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

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

Adoption of expense budget with regard to a memorandum of understanding contained in the terms and conditions.

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

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

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

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

§ 6-10. Expense budget administration.

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

the units of appropriation are established pursuant to the adopted budget, the administration of which is subject to the provisions of this chapter, the state civil service law, and other applicable law.

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

1. quarterly spending allotments for each unit of appropriation and

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

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

(ii) ceilings on the total number of uniformed, civilian and pedagogical employees; and

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

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

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

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

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

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

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

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

§ 6-11. Budget modification.

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

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

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

1. shall be from one agency to another; or

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

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

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

(e) The procedures and required approvals pursuant to the amendment, adoption of the budget, veto of the mayor and appropriation, certification and publication of the budget, without regard to the dates specified therein, shall be followed in the case of:

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

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

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

§ 6-12. Quarterly account of council budget.

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

§ 6-13. General fund.

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

§ 6-14. Expenditure reports.

Any public or private agency, authority, corporation, board or commission which receives city funds and is not otherwise subject to the

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

§ 6-15. Self-dealing among members of the governing boards of charitable institutions.

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

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

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

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

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

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

As used in this charter:

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

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

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

3. the acquisition of any furnishings, machinery, apparatus or equipment for any public betterment or improvement when such betterment or improvement is first constructed or acquired;

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

(i) streets and parks;

(ii) bridges and tunnels;

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

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

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

(vi) any combination of the above.

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

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

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

1. purposes and public to be served;

2. programs to be conducted in the facility;

3. gross and net amounts of space and bulk for any building or structure and for areas for different functions and activities;

4. identification of required architectural, engineering or other consultants and estimated fees for such consultants;

5. estimated completion dates for scope, design and construction;

6. total estimated project costs, including costs for site acquisition, preparation and tenant relocation, design, construction and equipment;

7. estimated expenditures for the project for each fiscal year until its completion;

8. estimated annual costs to operate programs within the facility when fully staffed and to maintain the facility; and

9. such other information as shall be required by the mayor or by resolution of the council.

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

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

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

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

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

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

1. any capital asset

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

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

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

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

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

§ 6-18. Preliminary capital budget.

The preliminary capital budget statements shall consist of:

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

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

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

(d) a summary description of the purpose of each capital project and the needs it will fulfill, the schedule for beginning and constructing the project, its period of probable usefulness and an appropriate maintenance schedule.

§ 6-19. Executive capital budget.

(a) The executive capital budget shall set forth separately each capital project, and shall include:

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

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

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

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

1. a statement for each of the three succeeding fiscal years of the total dollar amounts necessary to complete projects initiated in prior years and projects proposed in the executive budget the amounts necessary for projects proposed to be initiated in future years and the amounts necessary for amendments and contingencies; and

2. a statement of the likely impact on the expense budget of staffing, maintaining and operating the capital projects included in or contemplated by the capital program.

§ 6-20. Amendment.

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

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

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

§ 6-21. Restrictions on capital projects.

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

(b) Funds included in the capital budget for a capital project that are not obligated or committed during the fiscal year in which appropriated shall not be obligated or committed in the subsequent fiscal year unless reappropriated in a subsequent capital budget or an amendment thereto. A capital project included in a capital budget that is not initiated by the expenditure of funds within two years after its inclusion in the budget shall be eliminated from the budget.

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

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

§ 6-22. Site selection.

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

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

§ 6-23. Project initiation; commitment plan.

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

(b) The approval of a scope of project for a capital project pursuant to this chapter, including the amount of obligations necessary to finance the design and construction of the project, shall constitute a direction and order to the agency to design the project, unless sufficient funds for such purpose have not been appropriated in the capital budget or are otherwise not available within the appropriate program category of the capital program. Such approval shall constitute notification to the comptroller of the comptroller's authorization to expend appropriated design funds.

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

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

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

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

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

(e) Any capital project which results in the acquisition or construction of a capital asset which will be subject to the requirements of this charter shall contain a provision requiring a comprehensive manual setting forth the useful life of the asset and explaining the activities necessary to maintain the asset throughout such useful life.

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

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

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

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

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

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

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

§ 6-25. Standards for capital projects.

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

mayor in accordance with provisions of this charter and any such disapproval shall be subject to override by the council in accordance with this charter.

§ 6-26. Scope of project.

(a) Each agency, with respect to a capital project under its jurisdiction included in a capital budget, shall prepare a proposed scope of project within appropriated planning funds. The proposed scope of project, or, in the case of a delay, an explanation for such delay along with a revised schedule, shall be submitted to the mayor and the council, by the date specified in the adopted capital budget in which the capital project is included. Such proposed scope shall identify all substantial differences between the guidelines for the capital project as contained in such scope and the description of the capital project contained in the report issued pursuant to this charter at the time such project was proposed in the executive budget or following the budget adoption in which such project was added to the capital budget.

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

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

1. it contains the information required by paragraph four of subdivision (d) of section 6-16 of this chapter and it conforms to the applicable standards for the type of project adopted pursuant to this chapter, and

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

§ 6-27. Design of capital project.

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

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

## Chapter 7
## Planning Department

§ 7-01. Planning department.

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

§ 7-02. Planning director.

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

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

§ 7-03. Powers, duties and functions.

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

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

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

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

4. hold public hearings on such plans and revisions thereof and transmit them, with findings and recommendations thereon, through the mayor to the council for its consideration and action;

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

6. prepare local laws or resolutions and rules and regulations governing the subdivision of lands within the city and any revisions or amendments thereto;

7. administer the zoning and subdivision local laws or resolutions and rules and regulations adopted thereunder and any regulatory laws or resolutions which may be adopted to supplement or replace such resolutions;

8. recommend periodic amendments to zoning resolutions and subdivision laws or regulations, and provide opportunity for taxpayers to recommend periodic amendments to zoning resolutions and subdivision laws or regulations;

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

10. establish procedures for the review of land utilization applications;

11. review subdivision plats and zoning petitions;

12. approve applications for special permits and variances within the jurisdiction of the department of city planning under the zoning resolution;

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

14. be custodian of the city map and thereon record all changes legally authorized;

15. administer the program prescribed by law with respect to the establishment and regulation of landmarks, portions of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts;

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

17. submit to the council a report on the impact of any such designation whether of a district or a landmark to the zoning resolution, projected public improvements, and any plans for the development, growth, improvement or renewal of the area involved, and a recommendation for council action with respect to any such designation;

18. review the executive capital program and budget for conformance to the purposes of the general plan and development plans prior to submission of the executive capital program and budget to the council and make a written report of his or her findings to the mayor and council at the time of submission of such executive capital program and budget;

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

20. consult with the appropriate State officials concerned with planning and environmental quality to assure compliance with State guidelines and oversee implementation of laws that require environmental reviews of actions taken by the city; and

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

§ 7-04. General plan.

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

§ 7-05. Development plans.

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

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

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

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

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

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

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

(e) Following the annual updating and adoption of the city's development plans, the council shall amend the city's zoning ordinance to conform it to the updated development plans in accordance with procedures prescribed by general law.

§ 7-07. Board of Appeals.

(a) There shall be a board of appeals which shall consist of five members to be termed commissioners, three of whom shall be appointed by the mayor and two appointed by the council. Members shall serve a staggered term of five years.

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

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

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

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

§ 7-08. Meetings.

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

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

§ 7-09. Powers and duties.

The board shall have the power:

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

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

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

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

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

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

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

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

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

§ 7-10. Procedure on appeals.

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

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

grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

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

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

## Chapter 8
## Franchises

§ 8-01. Franchises.

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

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

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

## Chapter 9
## Contracting

§ 9-01. Procurement.

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

§ 9-02. Conditions.

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

(a) cost effective or necessary to obtain special expertise;

(b) necessary to provide a service not needed on a long-term basis;

(c) necessary to avoid a conflict of interest; or

(d) where personnel or expertise is not available in city government.

§ 9-03. Procedures.

All contracts shall be awarded in accordance with the following procedures:

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

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

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

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

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

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

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

Each agency shall publish in the appropriate publication and in newspapers of city, state or national distribution and trade publications, notice of:

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

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

(c) the comptroller shall promulgate rules providing for the publication and content of notices of contract actions required by this chapter. Such rules shall include but not be limited to provisions regarding the timing and frequency of notices, the required duration of solicitation periods, and the form and content of notices.

§ 9-05. Agency contract files.

Each agency shall maintain files containing all information pertaining to the solicitation, award and management of each contract of the agency. The agency contract files shall contain copies of each determination, writing or filing required by this chapter pertaining to a contract including the circumstances under which the procurement was let in accordance with section 9-02 of this chapter, and copies of all costs effectiveness analyses. Agency contract files shall be open to public inspection with adequate protection for information which is confidential.

§ 9-06. Centralized contract and contractor information.

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

(a) a copy of the contract;

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

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

(d) information regarding the contractor's qualifications and performance;

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

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

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

(h) any analysis and determination of cost effectiveness.

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

§ 9-07. Adverse impact on public employees.

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

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

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

## Chapter 10
## Referendum and Amendment

§ 10-01. Referendum on pending legislation.

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

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

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

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

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

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

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

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

§ 10-02. Charter amendment.

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

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

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

## Chapter 11
## Property of the City

§ 11-01. Inalienable property.

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

§ 11-02. Authority to acquire real property.

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

(b) The council by local law shall prescribe the procedures for all acquisitions of real and personal property by the city, including procedures for determining compensation and for appealing from such determination without prejudice to the appellant. In addition to all other requirements of law, written notice of the application to have compensation for real property ascertained in any proceeding brought by the city to acquire title to real property shall be given to the owners of all property affected by the proceeding to such application. Such notice shall state the purpose for which the property is to be acquired and the date when such application will be presented and shall be made public not less than ten days prior to such proceeding. Any owner whose property has been taken in any such proceeding which has not been used for the purpose stated in the proceeding for acquisition shall have the right of first refusal to repurchase such property from the city after the expiration of a five-year period from the date of the entry of the final decree in the proceeding for the price paid plus simple interest.

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

No real property of the city may be sold, leased, exchanged or otherwise disposed of except as specifically provided by law.

## Chapter 12
## Personnel Management

§ 12-01. Declaration of intent.

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

1. preserve and promote merit and fitness in city employment;

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

(b) Consistent with subdivision (a) of this section, the heads of city agencies shall have such powers, duties and responsibilities for personnel management as they shall require to administer their agencies effectively and to supervise, evaluate, motivate, discipline, provide incentives for and improve the skills of employees of the city.

§ 12-02. Department; personnel director.

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

§ 12-03. City civil service commission.

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

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

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

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

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

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

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

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

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

1. to recruit personnel;

2. to make studies in regard to the grading and classifying of positions in the civil service, establish criteria and guidelines for allocating positions to an existing class of positions, and grade and establish classes of positions;

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

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

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

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

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

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

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

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

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

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

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

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

14. to develop, in conjunction with other city agencies, a clearinghouse for information on employment and educational programs and services for minority group members and women; and

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

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

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

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

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

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

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

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

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

8. to annually publish and submit to the mayor, council and the commission on equal employment practices a report on the activities of the department of personnel and city agencies to provide fair and effective affirmative employment practices to ensure equal employment opportunity for minority group members and women who are employed by, or who seek employment with, city agencies. Such report shall include, but not be limited to, an analysis of the city government workforce and applicants for such employment by agency, title and classification; a description of each agency's employment practices, policies and programs; an analysis of the effectiveness of the city's efforts to

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

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

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

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

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

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

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

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

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

1. to recruit personnel;

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

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

4. to allocate individual managerial or executive positions to managerial assignment levels;

5. to assist the personnel department in the determination of minimum qualifications for classes of positions and to review and evaluate qualifications of candidates for positions in the civil service;

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

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

8. to determine whether to hold an open competitive or promotion examination to fill positions in the civil service subject to disapproval of the personnel director within thirty days;

9. to plan and administer employee incentive and recognition programs;

10. to fill vacant positions within quarterly spending allotments and personnel controls pursuant to this charter;

11. to administer and certify eligible lists for classes of positions unique to the agency;

12. to make appointments to competitive positions from eligible lists pursuant to subdivision one of section sixty-one of the state civil service law, which authority shall not be abridged or modified by local law or in any other manner;

13. to establish and administer performance evaluation programs to be used during the probationary period and for promotions, assignments, incentives and training;

14. to conduct training and development programs to improve the skills, performance and career opportunities of employees;

15. to ensure and promote equal opportunity for all persons in appointment, payment of wages, development and advancement;

16. to administer employee safety programs;

17. to maintain personnel records;

18. to perform such other personnel management functions as are delegated by the personnel director pursuant to this chapter or that are not otherwise assigned by this chapter;

19. to establish measures and programs to ensure a fair and effective affirmative employment plan to provide equal employment opportunity for minority group members and women who are employed by, or who seek employment with, the agency and, in accordance with the uniform procedures and standards established by the department of personnel for this purpose, to adopt and implement an annual plan to accomplish this objective. Copies of such plans shall be filed with the mayor, council, department of personnel, equal employment practices commission, and city civil service commission and shall be made available for reasonable public inspection; and

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

(b) Within one year from the effective date of this charter, the head of each agency shall prepare and submit to the mayor and the personnel director a plan and schedule for the discharge of the powers and duties assigned in this section. No such plan shall take effect until approved by the mayor.

(c) The mayor may modify, suspend, or withdraw for cause any power or duty assigned or delegated to the head of an agency pursuant to this section.

(d) Notification prior to each action or decision of an agency pursuant to this chapter which changes the status of an individual employee, a position, or a class of positions shall be provided to the personnel director. The head of each agency shall certify on each payroll that all personnel actions and transactions of the agency conform with the provisions of the state civil service law and this chapter, the rules of the personnel director and other applicable law.

(e) Before any new position in the city service shall be created, the agency head shall furnish the commissioner of finance with a certificate stating the title of the class of positions to which the position is to be allocated. If the position is to be allocated to a new class of positions, the agency head shall request of the personnel director, and the personnel director shall furnish to the agency head and the commissioner

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

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

(g) The heads of city agencies or their designated representatives shall fulfill the requirements for agency participation in matters affecting the management of the agency in advance of collective bargaining negotiations affecting employees.

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

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

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

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

§ 12-06. Management service.

(a) The personnel director, in consultation with the heads of agencies, shall develop and submit to the mayor a city-wide plan and schedule for the development of qualified and competent technical, professional, management, administrative, and, supervisory personnel in the civil service to meet the managerial needs of city government. The mayor shall approve, disapprove or modify the plan within one year after the effective date of this charter.

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

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

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

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

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

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

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

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

7. performance evaluations for members of the service to be used for assignments, incentive awards, probationary period review, and disciplinary action;

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

9. management intern programs; and

10. training and career development programs.

(c) The personnel director shall conduct city-wide programs and functions related to the management service; assist agencies in the implementation of the management service plan; and review and evaluate agency performance under the plan.

§ 12-07. Appointments and promotions.

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

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

§ 12-08. Power of investigation.

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

§ 12-09. No compensation to unauthorized employees.

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

§ 12-10. Examination for licenses.

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

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

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

(a) Notwithstanding any provision in this charter to the contrary, the mayor or head of an agency may designate any officer or employee occupying a position in the competitive class of the civil service to serve in a position in the exempt class, and in such case, the officer or employee so designated shall thereupon enter upon and exercise all the powers and duties and receive the salary of such exempt position, and shall retain all the rights, privileges and status of such officer or employee's position in the competitive class.

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

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

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

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

§ 12-12. Residency exemption.

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

## Chapter 13
## Equal Employment Practices Commission

§ 13-01. Equal employment practices commission.

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

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

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

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

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

§ 13-02. Duties and powers of the equal employment practices commission.

(a) The commission:

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

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

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

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

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

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

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

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

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

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

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

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

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

8. to establish appropriate advisory committees;

9. to serve with such other agencies or officials as shall be designated by the mayor as the city liaison to federal, state and local agencies responsible for compliance with equal employment opportunity for minority group members and women who are employed by or who seek to be employed by city agencies; and

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

§ 13-03. Compliance procedures.

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

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

(c) If the commission makes a preliminary determination pursuant to section 13-02 of this chapter, that any plan, program, procedure, approach, measures or standard adopted or utilized by any city agency or the department of personnel does not provide equal employment opportunity; and/or if the commission makes a preliminary determination pursuant to this chapter and chapter twelve of this charter, that an agency has not provided equal employment opportunity the commission shall notify the agency in writing of this determination and provide an opportunity for the agency to respond. If the commission, after consideration of any such response and after consulting with the agency, concludes that the corrective actions, if any, taken or planned by the agency are not sufficient to correct the non-compliance identified in the preliminary determination, it should make a final determination in writing, including such recommended corrective action as the commission may deem appropriate. The agency shall within thirty days thereafter respond to the commission on any corrective action it intends to make and shall make monthly reports to such commission on the progress of such corrective action. If the commission, after a period not to exceed six months, determines that the agency has not taken appropriate and effective corrective action, the commission shall notify the agency in writing of this determination and the commission may thereafter publish a report and recommend to the mayor whatever appropriate corrective action the commission deems necessary to ensure compliance with equal employment opportunity pursuant to the requirements of this chapter and chapter twelve of this charter. Within thirty days of such determination the agency shall submit a written response to the commission and the mayor. The mayor after reviewing the commission's findings and the agency's

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

## Chapter 14
## Collective Bargaining

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

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

§ 14-02. Board of collective bargaining.

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

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

§ 14-03. Bureau of certification.

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

§ 14-04. Powers and duties.

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

§ 14-05. Compensation.

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

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

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

(c) Appointment of counsel and attorneys. The director may appoint a counsel and attorneys, who, at the direction of the bureau of certification or the board of collective bargaining may appear for and represent the office of collective bargaining or either of the aforesaid boards in any legal proceeding.

§ 14-06. Publication of collective bargaining agreements.

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

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

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

§ 14-07. Budgeting for agreements.

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

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

## Chapter 15
## Transitory Provisions

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

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

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

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

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

§ 15-03. Continuity of employee representation.

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

§ 15-04. Continuity of collectively bargained benefits.

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

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

Future alterations of the city negotiating units shall be made pursuant to article fourteen of the state civil service law and office of collective bargaining implementing legislation.

§ 15-06. Establishment of new titles.

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

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

§ 15-07. Dispute resolution.

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

§ 15-08. Existing rights and remedies preserved.

No existing right or remedy of any character shall be lost or impaired 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;

8. heads of city departments and agencies and the staff of the office of the mayor shall give notice to the commissioner of labor relations of all meetings held with labor unions, associations, or other organizations representing city employees;

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

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

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

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

§ 3-002. Elections.

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

2. The Mayor elect and common council elect of the city of Staten Island, upon the constitutional oath of office, are hereby authorized to represent the interests of the city of Staten Island, and as governmental officers of the city of Staten Island are authorized to enter into negotiations as provided under this act and enter into such purchase or employment contracts as would be authorized for such city subsequent to the date of establishment. Any such contracts or agreements from such negotiations shall be binding upon the city of Staten Island.

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

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

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

2. Definitions. For the purposes of this section:

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

(b) "Director of management and budget" means the director of management and budget of the city of Staten Island.
(c) "Corporation" means the municipal corporation as created by this section.
(d) "Mayor" means the mayor of the city of Staten Island.
(e) "Comptroller" means the comptroller of the city of Staten Island.
(f) "State" means the state of New York.
(g) "Bonds" and "notes" means revenue bonds and notes respectively, issued by the corporation pursuant to this section.
(h) "Revenues" means all aid, rents, fees, charges, payments and other income and receipts paid or payable to the municipal corporation for the account of the city of Staten Island, including any payment required to be made to the corporation by this section.
(i) "Operating expenses" means all expenses incurred by the government in the administration of the municipal corporation including but not limited to salaries, administrative expenses, insurance premiums, auditing and legal expenses and fees and expenses incurred for professional consultants and fiduciaries.
(j) "Capital reserve fund requirement" means as of any particular date of computation, an amount of money equal to the amount required, for the then current fiscal year of the municipal corporation, to pay interest during such fiscal year on all bonds of the corporation outstanding on said date of computation, the principal amount of all bonds of the corporation outstanding on said date of computation which matures during such fiscal year and the amount of sinking fund payments payable during such fiscal year with respect to any bonds of the corporation outstanding on said date of computation.
(k) "Sinking fund payment" means the amount of money specified in the resolution authorizing bonds as payable into a sinking fund during a particular fiscal year for the retirement of term bonds which mature after such fiscal year, but shall not include any amount payable by reason only of the maturity of the bond.
3. General powers as a municipal corporation. The city shall have the following powers in addition to those specially conferred elsewhere in this act: (a) to sue and be sued; (b) to have a seal and alter the same at pleasure; (c) to make and alter by-laws for its organization and internal management and, subject to agreements with noteholders or bondholders, to make rules and regulations governing the use of its property and facilities; (d) to make and execute contracts, leases, subleases and all other instruments or agreements necessary or convenient for the exercise of its powers and functions under this section; (e) to purchase real or personal property necessary and convenient for its municipal purposes; to execute and deliver deeds for real property held in its own name; and to sell or otherwise to dispose of such real or personal property that, in the judgment of the city, is no longer necessary for its municipal purposes; (f) to appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation; (g) to commence any action to protect or enforce any right conferred upon it by any law, contract or other agreement; (h) to borrow money and to issue negotiable notes or bonds or other obligations and to fund or refund the same, and to provide for the rights of the holders of its obligations; (i) subject to the provisions of any contract with noteholders or bondholders, to invest any funds held in reserves or sinking funds, or any funds not required for immediate use or disbursement, at the discretion of the city, in obligations of the state or federal government, obligations the principal of and interest on which are guar-

anteed by the state or federal government, or obligations of agencies of the federal government which may, from time to time, be legally purchased by savings banks of the state as investments of funds belonging to them or in their control and which have been approved by the state comptroller or in secured time deposits or other interest bearing accounts secured by such obligations; (j) subject to the provisions of any contract with noteholders or bondholders, to purchase notes or bonds of the city; (k) to procure insurance against any loss in such amounts and from such insurers as it deems desirable; (l) to engage the services of consultants on a contract basis for rendering professional and technical assistance and advice; (m) to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from any other source and to comply with the terms and conditions thereof; (n) as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to pledge all or any part of its revenues; (o) to enact such local laws to take effect on the date of establishment as shall be necessary to provide for effective transition of government; and (p) to do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this act.

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

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

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

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

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

be transferred to the city of Staten Island shall be transferred to positions in employment by the city of Staten Island upon the establishment of the city of Staten Island and shall retain all rights, privileges, benefits and salaries to which any such employee was previously entitled as an employee of the preceding municipality. Notice that an employee is subject to transfer shall be given to an employee no less than twenty days prior to the effective date of transfer. Any employee so notified may opt to remain in his or her employment by the preceding municipality rather than be transferred by so informing his or her employer ten days prior to the transfer date. Such employee shall be retained in employment by the preceding municipality and retain all rights, privileges, benefits and salaries to which the employee was entitled prior to the establishment of the city of Staten Island.

4. Transfer mechanism. The mechanism for the transfer of the employees to the city of Staten Island shall be the subject of negotiations among the preceding municipality, the city of Staten Island and the appropriate public employee organizations. The parties shall negotiate an appeals process for employees aggrieved by their exclusion from the transfer. If the parties are unable to reach agreement as to transfer issues, the parties shall submit such issues to mediation and, if necessary, impasse panels to be appointed in accordance with the collective bargaining provisions of the administrative code of the preceding municipality. Transferees represented by the public employee organizations shall be entitled to all rights and benefits which they were entitled to prior to transfer including, but not limited to, seniority and accrued annual and sick leave time.

5. Vacancies. Any employee of the preceding municipality not subject to the transfer set forth in subdivision three of this section shall be eligible to transfer to a vacant position in a title in the city of Staten Island requiring the same, similar or related duties to duties actually performed in the preceding municipality title by submitting written notice of intent to transfer to the city of Staten Island director of personnel within six months of the establishment of the city of Staten Island. The preceding municipality shall inform in writing employees who are residents of Staten Island of their right to apply for transfer. Immediately upon receipt of any notice to transfer, the director of personnel shall establish for each city of Staten Island title two lists of eligible employees who give timely notice in order of the employees' preceding municipality seniority in the title requiring the same, similar or related duties. The first list shall include the names of transfer applicants who are domiciled in the city of Staten Island on the date of the submission of the notice. The second list shall include the names of transfer applicants not domiciled in the city of Staten Island. Appointments to any vacant positions in these titles shall be made from the Staten Island domicile list and, when that list is exhausted, from the second list until such lists are exhausted or until a period of four years from the date of the establishment of the individual list has expired.

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

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

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

(a) On and after the date of the establishment of the city of Staten Island, employees of the preceding municipality who are transferred to employment in the city of Staten Island shall thereupon become members of the appropriate state retirement system to the extent permitted or required by the provisions of the retirement and social security law, the education law or local law, as appropriate, and the employees' reserves in any other retirement system shall be transferred to the appropriate New York state retirement system without request by them or notice to the retirement systems, except that any such employee who is a member of one of the retirement systems of the preceding municipality may elect to continue membership in such system. Any election pursuant to this subdivision shall be made no later than the one hundred twentieth day succeeding the date on which the provisions of this section become effective, by filing a written notice thereof with the administrative head of the appropriate New York state, preceding municipality and city of Staten Island retirement systems, as appropriate, and once made and filed, shall be irrevocable. Upon the retirement of an employee who has made such an election, the calculation of final average salary by the retirement system of the preceding municipality shall be performed as if the salary earned as a city of Staten Island employee on and after the effective date of this section was earned in employment of the preceding municipality. In the case of an employee who remains or becomes a member of a New York state employees' retirement system pursuant to this subdivision, the retirement system of the preceding municipality shall make a transfer of reserves, contributions and credits to such New York state employees' retirement system, in the manner required by section 43 of the retirement and social security law.

(b) The comptroller of the preceding municipality shall certify to the comptroller of the city of Staten Island and the state comptroller or other chief officer of a state pension system the amount of money required to be paid by the city of Staten Island for pension costs resulting from elections made pursuant to paragraph (a) of this subdivision and the comptroller of the city of Staten Island shall pay to the retirement system of the preceding municipality upon approval by the state comptroller or other chief officer of a state pension system, the amounts so certified by the comptroller of the preceding municipality. The comptroller of the preceding municipality shall also certify to the comptroller of the city of Staten Island and the state comptroller or other chief officer of a state pension system the amount of money required to be contributed by such employees. The comptroller of the city of Staten Island shall be authorized to provide for the withholding or withhold the contribution of such employees and the payment of that amount to the retirement system of the preceding municipality. The amount so certified pursuant to this paragraph shall be the same as the amounts required to be contributed for similarly situated city employees by the preceding municipality and by employees of the preceding municipality.

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

employment and dependents of such employees and retirees shall be provided in accordance with the personnel and labor, health insurance coverage for municipal employees, persons retired from municipal employment and dependents of such employees and retirees provisions of the administrative code of the preceding municipality unless the duly recognized public employee representative negotiates altered terms.

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

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

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

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

During the transition period the mayor and comptroller of the city of Staten Island and the mayor and comptroller of the preceding municipality are authorized to enter into agreements as to the provision of municipal services by the preceding municipality to the city of Staten Island to be provided on or after the date of establishment of the city of Staten Island and the terms and conditions thereof.

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

1. (a) Proportion of debt to be assumed by the city of Staten Island. The proportion of the debt of the preceding municipality which shall be assumed by the city of Staten Island, as constituted by this act, shall be determined in the following manner: The mayor and the comptroller of the city of Staten Island, as representing the city of Staten Island and the mayor and the comptroller of the preceding municipality, are hereby authorized and empowered to agree if they can, as to the amount of the debt of the preceding municipality, which should equitably and properly be assumed by the city of Staten Island. If the mayor and the comptroller of the city of Staten Island and the mayor and the comptroller of the preceding municipality shall be unable to agree within six months after this section takes effect as to the proportion of said debt of the preceding municipality to be assumed by the city of Staten Island, the supreme court of the third judicial district shall have power to determine the proportion of said debt of the preceding municipality to be assumed by the city of Staten Island, and to enforce such award, decision and determination as shall be made in an action to be brought by and in the name of either of said parties not less than six months nor more than one year after this section takes effect. Nothing herein contained shall impair the obligation of any contract; and the property and inhabitants of such part of the preceding municipality as is by this act included within the city of Staten Island, shall continue liable to the existing creditors of the said preceding municipality, in like manner, as if this act had not been passed. But from and after the taking effect of this section, the preceding municipality shall have no power to issue any bond, obligation or other evidence of indebtedness which shall bind or render liable the property or inhabitants of any part of said municipality included within the city of Staten Island as hereby constituted. The apportionment of the debt of the preceding municipality shall be determined according to the relative assessed valuation of the real property included in, or remaining without the city of Staten Island.

(b) Proportion of obligations other than debt to be assumed by the city of Staten Island. The proportion of the obligations other than debt of the preceding municipality which shall be assumed by the city of Staten Island, as constituted by this act, shall be determined in the following manner: The mayor and the comptroller of the city of Staten Island, as representing the city of Staten Island and the mayor and the comptroller of the preceding municipality, are hereby authorized and empowered to agree if they can, as to the amount of the obligations other than debt of the preceding municipality, which should equitably and properly be assumed by the city of Staten Island. If the mayor and the comptroller of the city of Staten Island and the mayor and the comptroller of the preceding municipality shall be unable to agree within six months after this section takes effect as to the proportion of said obligations other than debt of the preceding municipality to be assumed by the city of Staten Island, the supreme court of the third judicial district shall have power to determine the proportion of said obligations other than debt of the preceding municipality to be assumed by the city of Staten Island, and to enforce such award, decision and determination as shall be made in an action to be brought by and in the name of either of said parties not less than six months nor more than one year after this section takes effect. Nothing herein contained shall impair the obligation of any contract; and the property and inhabitants of such part of the preceding municipality as is by this act included within the city of Staten Island, shall continue liable to the existing obligees of the said preceding municipality, in like manner, as if this act had not been passed. But from and after the taking effect of this section, the preceding municipality shall have no power to bind or render liable the property or inhabitants of any part of said municipality included within the city of Staten Island as hereby constituted.

(c) Disposition of real and personal property owned by or held in trust for the preceding municipality. All the real property owned by the preceding municipality and situated in that part of said municipality included within the city of Staten Island, as constituted by this act, is hereby vested in the said city of Staten Island and divested out of the preceding municipality, and all of the real property owned by the preceding municipality and situated elsewhere in said municipality is hereby vested in the preceding municipality and divested out of the said city of Staten Island. All of the property owned by the preceding municipality other than real property, including money, investments, securities on investments and money held in trust for the benefit of said municipality, directly or indirectly, shall be divided between the preceding municipality and the city of Staten Island, as constituted by this act, and the proportion of the same to which each shall, in equity and good conscience, be entitled to receive upon such division, shall be ascertained and determined by agreement by and between the mayor and comptroller of the preceding municipality, upon the one side, and the mayor and the comptroller of the said city of Staten Island, upon the other side, and in the case of their inability to agree upon such division within six months after this section shall take effect, the supreme court in the third judicial district is hereby empowered to divide the same between them and to ascertain and award to each its equitable proportion thereof, and to enforce its determination thereon, and either of the said municipalities may institute and prosecute, in its own name, an action in said court for that purpose after the expiration of six months and before the expiration of one year after this section takes effect.

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

2. (a) Proportion of debt to be assumed by the city school district of the city of Staten Island. The proportion of the debt of the city school district of the preceding municipality which shall be assumed by the city school district of the city of Staten Island, as constituted by this act, shall be determined in the following manner: The board of education of the city school district of the city of Staten Island and the board of education of the city school district of the preceding municipality, are hereby authorized and empowered to agree if they can, as to the amount of the debt of the city school district of the preceding municipality, which should equitably and properly be assumed by the city school district of the city of Staten Island. If the board of education of the city school district of the city of Staten Island and the board of education of the city school district of the preceding municipality shall be unable to agree within six months after this section takes effect as to the proportion of said debt of the city school district of the preceding municipality to be assumed by the city school district of the city of Staten Island, the supreme court of the third judicial district shall have power to determine the proportion of said debt of the city school district of the preceding municipality to be assumed by the city school district of the city of Staten Island, and to enforce such award, decision and determination as shall be made in an action to be brought by and in the name of either of said parties not less than six months nor more than one year after this section takes effect. Nothing herein contained shall impair the obligation of any contract; and the property and inhabitants of such part of the city school district of the preceding municipality as is by this act included within the city school district of the city of Staten Island, shall continue liable to the existing creditors of the city school district of the said preceding municipality, in like manner, as if this act had not been passed. But from and after the taking effect of this section, the city school district of said preceding municipality shall have no power to issue any bond, obligation or other evidence of indebtedness which shall bind or render liable the property or inhabitants of any part of the city school district of said municipality included within the city school district of the city of Staten Island as hereby constituted. The apportionment of the debt of the city school district of the preceding municipality shall be determined according to the relative assessed valuation of the real property included in, or remaining without the city school district of the city of Staten Island.

(b) Disposition of real and personal property owned by or held in trust for the city school district of the preceding municipality. All the real property owned by the city school district of the preceding municipality and situated in that part of the city school district of said municipality included within the city school district of the city of Staten Island, as constituted by this act, is hereby vested in the city school district of the city of Staten Island and divested out of the city school district of the preceding municipality, and all of the real property owned by the city school district of the preceding municipality and situated elsewhere in the city school district of the preceding municipality is hereby vested in the city school district of the

preceding municipality and divested out of the city school district of the city of Staten Island. All of the property owned by the city school district of the preceding municipality other than real property, including money, investments, securities on investments and money held in trust for the benefit of the city school district of the preceding municipality, directly or indirectly, shall be divided between the city school district of the preceding municipality and the city school district of the city of Staten Island, as constituted by this act, and the proportion of the same to which each shall, in equity and good conscience, be entitled to receive upon such division, shall be ascertained and determined by agreement by and between the board of education of the city school district of the preceding municipality, upon the one side, and the board of education of the city school district of the city of Staten Island, upon the other side, and in the case of their inability to agree upon such division within six months after this section shall take effect, the supreme court in the third judicial district is hereby empowered to divide the same between them and to ascertain and award to each its equitable proportion thereof, and to enforce its determination thereon, and either of the said school districts may institute and prosecute, in its own name, an action in said court for that purpose after the expiration of six months and before the expiration of one year after this section takes effect.

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

§ 3-008. Continuance of municipal services.

The preceding municipality shall be obligated to continue to maintain during the transition period all municipal services and related equipment and supplies at a level materially equivalent to that level of municipal services and related equipment and supplies for the geographical area of the city of Staten Island as existing on the first of July in the year in which this act shall have become a law subject to existing budget restraints of the preceding municipality.

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

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

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

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

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

1. The territory of the city of Staten Island in the county of Richmond, on the date when this act shall take effect, shall be and is hereby constituted a city school district, and shall be known as the city school district of the city of Staten Island and shall have and enjoy all the powers and duties of a city school district under the provisions of the education law.

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

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

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

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

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

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

1. No person shall be eligible to the office of member of a board of education who is not a citizen of the United States, who is not qualified to register for or vote at an election in accordance with the provisions of section 5-106 of the election law, and who, in the case of the city school district of the city of Yonkers, has not been a resident of the city school district for which he **or she** is chosen for a period of at least three years immediately preceding the date of his **or her** election or appointment and who, in the case of the city school district of the city of Buffalo, in the case of a member to be elected at large is not a qualified voter of such city school district and who has not been a resident of such district for a period of at least three years immediately preceding the date of his **or her** election and in the case of a member elected from a city school subdistrict is not a qualified voter of such city school subdistrict and has not been a resident of the city school district for three years and a resident of the city school subdistrict which he **or she** represents or seeks to represent for a period of one year immediately preceding the date of his **or her** election, and who, in the case of the city school district of the city of Rochester, is not a qualified voter under section 5-102 of the election law of such city school district; **and who, in the case of the city school district of the city of Staten Island has been a qualified voter under section 5-102 of the election law of such city school district for at least ninety days immediately preceding the date of his or her election or appointment;** and who in the case of the city school district of the city of Syracuse has not been a qualified voter under section 5-102 of the election law of such city school district for at least ninety days immediately preceding the date of his **or her** election or appointment.

2. In the city school districts of the cities of Rochester and Syracuse the members of such board of education shall be chosen by the voters at large at either a general or municipal election, or at both. **In the city school district of the city of Staten Island the members of such board of education shall be chosen pursuant to the provisions of subdivision eleven of this section.** In the city school district of the

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

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

a. Rochester: Four Years;

b. Syracuse: Four Years;

c. Yonkers: Five Years**; and**

**d. Staten Island: Three Years**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| Date | Name of Signer | Present Residence | Assembly District | Election District |
|---|---|---|---|---|
| ..... | ..... | ..... | ... | ... |
| ..... | ..... | ..... | ... | ... |
| ..... | ..... | ..... | ... | ... |

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,

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

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

p. The members so elected to the board of education shall convene on the first business day in July of each year at the time of the commencement of their term of office and select from their members a president who shall serve for a term of one year or such other term, not exceeding the term of his or her office, as may be fixed by the rules and regulations of the board.

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

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

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

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

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

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

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

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

14. To provide in the schools administered by the board of education of the city of New York **or the city of Staten Island**, the proper book or books, in form as required by the by-laws of the board of education of such city, in which it shall cause the class teachers under the direction and supervision of the principal to enter the names, ages and residences of the pupils attending the school, the name of the parent or guardian of each pupil and the days on which the pupils shall have attended respectively, and the aggregate attendance of each pupil during the year, and also the day upon which the school shall have been visited by the superintendent of schools or by an associate superintendent of schools or by an assistant superintendent, or by members of the board of education, or by members of the local school board, or by any of them, which entry shall be verified by such oath or affirmation of the principal as may be prescribed by the board of education of such city. Such books shall be preserved as the property of such board of education and shall at all times be open to inspection by members of such board of education, by members of the local school boards and by the superintendent of schools, or by any associate superintendent of schools, or by the assistant superintendents.

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

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

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

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

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

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

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

5. It shall be unlawful for a schoolhouse to be constructed in the city of New York or the city of Staten Island without an open-air playground attached to or used in connection with the same. Existing playgrounds shall not be sold, leased or transferred, or permanently authorized for other uses such as school building construction, renovation, placement or storage of building materials for such work that would eliminate the use of such playground space for outdoor recreational activities unless a plan is established and implemented to provide suitable and adequate physical activities or space to accommodate the physical and recreational needs of the pupils of such building. The provisions of this subdivision shall not apply to school construction or renovation activities that occur on or require the use of such playgrounds for a duration of no more than one year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2568-a. Superintendent of schools authorized to require medical examination of certain employees of the board of education of the city school district of the city of Staten Island. The superintendent of schools shall be empowered to require any person employed by the board of education of the city school district of the city of Staten Island to submit to a medical examination by a physician or school medical inspector of the board, in order to determine the mental or physical capacity of such person to perform his or her duties, whenever it has been recommended in a report in writing that such examination should be made. Such report to the superintendent may be made only by a person under whose supervision or direction the person recommended for such medical examination is employed. The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his or her own choice. The findings upon such examination shall be reported to the superintendent of schools and may be referred to and considered for the evaluation of service of the person examined or for disability retirement.

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

1. (a) i. [~~Teachers~~] Except as otherwise provided for in paragraph (c) of this subdivision, teachers and all other members of the teaching staff, appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years or as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the probationary period shall be limited to one year; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the probationary period shall not exceed two years; provided, however, that in cities with a population of one million or more, a teacher appointed under a newly created license, for teachers of reading and of the emotionally handicapped, to a position which the teacher has held for at least two years prior to such appointment while serving on tenure in another license area who was not dismissed as a result of charges brought pursuant to

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

ii. [~~Teachers~~] **Except as otherwise provided for in paragraph (c) of this subdivision, teachers** and all other members of the teaching staff appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of four years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years and, if a classroom teacher, has received annual professional performance review ratings in each of those years, or has rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the teacher shall be appointed for a probationary period of two years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter in his or her final year of service in such other school district or board of cooperative educational services; provided, however, that, in the case of a classroom teacher who has been appointed for a probationary period during the two thousand twenty--two thousand twenty-one, the two thousand twenty-one--two thousand twenty-two or the two thousand twenty-two--two thousand twenty-three school year and who has been appointed on tenure in another school district within the state, the school district where currently employed, board of cooperative educational services or state school for the blind or deaf, and who was not dismissed from such district, board or state school for the blind or deaf as a result of charges brought

pursuant to section three thousand twenty-a or section three thousand twenty-b of this chapter, such teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, such teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter in the two thousand seventeen--two thousand eighteen or two thousand eighteen--two thousand nineteen school year in such other school district, board of cooperative educational services or state school for the blind or deaf; provided further, however, that in cities with a population of one million or more, a teacher appointed under a newly created license, for teachers of reading and of the emotionally handicapped, to a position which the teacher has held for at least two years prior to such appointment while serving on tenure in another license area who was not dismissed as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his or her probationary period. In all city school districts subject to the provisions of this article, failure to maintain certification as required by this article and by the regulations of the commissioner shall be cause for removal within the meaning of subdivision five of this section.

(b) i. [~~Administrators~~] **Except as otherwise provided for in paragraph (c) of this subdivision, administrators**, directors, supervisors, principals and all other members of the supervising staff, except executive directors, associate, assistant, district and community superintendents and examiners, appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent or chancellor of schools, for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

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

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

**(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subdivision, the superintendent of the city school district of the city of Staten Island shall have the authority to appoint, with the approval of the school board, principals and city wide administrators. Such superintendent may appoint assistant principals and other clerical and administrative staff without the approval of the school board. Such assistant principals, clerical and administrative staff shall serve in accordance with the provisions of paragraphs (a) and (b) of this subdivision.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

years. The term of office for the student member shall be one year. In the event the student member ceases to be a student at the institution such member shall be required to resign. Members appointed by the governor may be removed by the governor. Members elected by the students of the institution may be removed by such students in accordance with rules and regulations promulgated by the respective representative campus student association in accordance with guidelines promulgated by the state university trustees. Members of such council shall receive no compensation for their services but shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties hereunder.

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

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

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

All rights, privileges and benefits provided by collectively bargained agreements to employees of the city university of the city of New York shall be continued for such employees transferred, reappointed or otherwise employed until such time as successor collective bargaining agreements are negotiated.

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

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

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

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

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

6. On and after the first of July in the second year next succeeding the date on which this act shall have become a law, officers and employees who become employees of the state pursuant to this act shall become members of the New York state employees' retirement system to the extent permitted or required by the provisions of the retirement and social security law, except that any employee who is a member of the New York city employees' retirement system may elect to continue membership in the New York city employees' retirement system. Any election pursuant to this section shall be made no later than the one hundred twentieth day after the effective date of this section, by filing a written notice thereof with the administrative head of the New York state employees' retirement system and the New York city employees' retirement system and, once made and filed, shall be irrevocable. Upon the retirement of an employee who has made such an election, the calculation of final average salary by the New York city employees' retirement system shall be performed as if the salary earned as a state employee on and after such effective date were earned in New York city employment. In the case of an employee who becomes a member of the New York state employees' retirement system pursuant to this section, the New York city employees' retirement system shall make a transfer of reserves, contributions and credits to the New York state employees' retirement system, in the manner required by section 43 of the retirement and social security law.

The comptroller of the city of New York shall certify to the state administrator the amount of money required to be paid by the state of New York for pension costs resulting from elections made pursuant to this section. The comptroller of the state of New York shall pay to the New York city employees' retirement system, upon approval by the state administrator, the amounts so certified by the comptroller of the city of New York. The comptroller of the city of New York shall also certify to the state administrator the amount of money required to be contributed by each of such employees. The comptroller of the state of New York shall be authorized to withhold the contributions of such employees and pay that amount to the New York city employees' retirement system. The amount so certified shall be the same as the amounts required to be contributed for similarly situated city employees by the city of New York and by employees of the city of New York.

§ 5-002. Subdivision 3 of section 352 of the education law, as amended by chapter 13 of the laws of 2021, is amended to read as follows:

3. The state university shall consist of the four university centers at Albany, Binghamton, Buffalo and Stony Brook, the designated colleges of arts and sciences at Brockport, Buffalo, Cortland, Fredonia, Geneseo, New Paltz, Old Westbury, Oneonta, Oswego, Plattsburgh, Potsdam [~~and~~], Purchase **and Staten Island**, empire state college, the agricultural and technical colleges at Alfred, Canton, Cobleskill, Delhi, Farmingdale and Morrisville, downstate medical center, upstate medical center, the college of optometry, the college of environmental science and forestry, maritime college, the college of technology at Utica/Rome, the statutory or contract colleges at Cornell university and Alfred university, and such additional universities, colleges and other institutions, facilities and research centers as have been or hereafter may be acquired, established, operated or contracted to be operated for the state by the state university trustees.

§ 5-003. Paragraphs (f) and (g) of subdivision 2 and paragraph (d) of subdivision 3 of section 6204 of the education law, paragraph (f) of subdivision 2 as amended by chapter 306 and paragraph (g) of subdivision 2 as added by chapter 305 of the laws of 1979, and paragraph (d) of subdivision 3 as amended by chapter 98 of the laws of 2010, are amended to read as follows:

(f) The five trustees appointed by the mayor shall include at least one resident of each of the [~~five~~] boroughs of the city of New York.

(g) The trustees appointed by the governor shall include at least one resident of each of the [~~five~~] boroughs of the city of New York.

(d) (i) The board of trustees shall hold at least one public hearing each year in each of the [~~five~~] boroughs of the city of New York. The purpose of such hearing shall be to receive testimony and statements from concerned individuals about university issues.

(ii) The board of trustees shall fix the time, place, duration and format of each hearing.

(iii) At least thirty days notice of the hearing shall be given by the chairperson of the board of trustees to all of the trustees, to all presidents of educational units, to the chair of faculty-senate bodies of educational units, to all student government presidents of educational units, to the borough president, the members of the city council, the members of the board of estimate, the local community boards of the borough where the hearing is to be held and to the media. The notice shall contain the time, place and date of the public hearing. Such information shall be made electronically available on the city university of New York website. Any such meeting of the board of trustees shall be conducted in accordance with article seven of the public officers law.

(iv) At least three trustees shall attend each hearing.

§ 6-001. The judiciary law is amended by adding a new article 5-C to read as follows:

**ARTICLE 5-C**

**INTERIM COURT STRUCTURE FOR THE CITY OF STATEN ISLAND**

**Section 178. Declaration of legislative findings and intent.**
**178-a. Continuation of court proceedings.**
**178-b. Judicial transition.**
**178-c. Judiciary jurisdiction.**
**178-d. Judiciary; family court.**
**178-e. Judiciary; criminal court.**
**178-f. Judiciary; civil court.**
**178-g. Judicial transition; structure.**
**178-h. Unified court system; services.**
**178-i. Judicial transition services.**
**178-j. Effect of existing collective bargaining agreements.**

**§ 178. Declaration of legislative findings and intent. The interim court structure established for the city of Staten Island by this article is being enacted in the exercise of the legislature's constitutional authority to provide for the creation and organization of units of local government. The legislature finds that it is not possible to create, fund and staff a new and jurisdictionally distinct court structure for the city of Staten Island which would be fully operational on the effective date of such city's incorporation. The legislature also finds that the creation of a jurisdictionally distinct court structure for the city of Staten Island would likely disrupt the orderly administration of justice in such city and the county of Richmond, unnecessarily inconvenience and confuse litigants, and increase significantly the cost of**

conducting litigation within such city and county. The purpose of this article is to prevent an interregnum in the operations of the unified court system in connection with the incorporation of the city of Staten Island and its organization as a functional unit of local government. By establishing an interim court structure for such city, the legislature intends to relieve taxpayers and litigants of the expense, inconvenience, confusion, and delay that would be occasioned by the creation of a new court structure for such city. By preserving the existing trial court structure in the county of Richmond during the period of governmental reorganization following the incorporation of the city of Staten Island, the legislature intends that all inhabitants of such county and city will continue to possess the same rights and access to the unified court system that they possessed immediately prior to the incorporation of such city.

§ 178-a. Continuation of court proceedings. The incorporation of the city of Staten Island shall not alter the jurisdiction of any court existing in the county of Richmond immediately prior to the effective date of such city's incorporation. All courts in such county are continued, and no civil or criminal appeal, action or proceeding pending before any court or any judge or justice on the effective date of incorporation shall abate or be impaired; and every such appeal, action or proceeding shall be continued in the court in which such appeal, action or proceeding was pending immediately prior to such effective date.

§ 178-b. Judicial transition. There is established a judicial transition period for the city of Staten Island. Such period shall commence on the effective date of such city's incorporation and terminate on December thirty-first in the fifth year following such incorporation or until the provisions of this article are specifically superseded by state law.

§ 178-c. Judiciary jurisdiction. During the judicial transition period:

(1) the county of Richmond shall be deemed to be a county within the city of New York for all purposes of article six of the state constitution;

(2) the county of Richmond shall be deemed to be a county within the city of New York for the purposes of section five hundred two of this chapter;

(3) the city of Staten Island shall be deemed to be a part of the city of New York for the purposes of section one hundred fifty-five and articles two-A and two-B of title two of the vehicle and traffic law; and

(4) the judge of the surrogate's court in the county of Richmond shall be deemed to be a judge of a surrogate's court within the city of New York for the purposes of subdivision c of section twelve of article six of the state constitution.

§ 178-d. Judiciary; family court. Notwithstanding section one hundred twenty-one of the family court act, the county of Richmond shall be deemed to be a county within the city of New York during the judicial transition period, and there shall be no fewer than three judges of such court who shall be residents of the county of Richmond. A vacancy occurring in the office of any such judge during the judicial transition period shall be filled by the mayor of the city of New York upon the recommendation of the mayor of the city of Staten Island consistent with the provisions of section two hundred sixteen-a of the family court act.

§ 178-e. Judiciary; criminal court. Notwithstanding the provisions of sections twenty and twenty-two of the New York city criminal court act, the city of Staten Island shall be deemed to be part of the city of New

York during the judicial transition period, and there shall be no fewer than three judges of such court who shall be residents of the city of Staten Island. A vacancy occurring in the office of such judge during the judicial transition period shall be filled by the mayor of the city of New York upon the recommendation of the mayor of the city of Staten Island consistent with the provisions of section twenty-two of the New York city criminal court act.

§ 178-f. Judiciary; civil court. Notwithstanding the provisions of section one hundred two-a of the New York city civil court act, the city of Staten Island shall be deemed to be part of the city of New York during the judicial transition period, and there shall be no fewer than three judges of such court who shall be residents of the city of Staten Island. A vacancy occurring in the office of such judge otherwise than by expiration of term during the judicial transition period shall be filled by the mayor of the city of New York upon the recommendation of the mayor of the city of Staten Island consistent with the provisions of section one hundred two-a of the New York city civil court act.

§ 178-g. Judicial transition; structure. The mayor and the common council of the city of Staten Island, in consultation with the chief administrator of the courts, shall develop a plan for an appropriate court structure for the city of Staten Island following the judicial transition period. Such plan shall include recommendations for the jurisdiction of each court, the number of judges needed, a personnel structure for nonjudicial officers and employees, necessary physical facilities, and a fiscal analysis of each component of the plan. Such plan shall be submitted to the governor, the legislature and to the chief judge of the state, no later than three years following commencement of the judicial transition period.

§ 178-h. Unified court system; services. The chief administrator of the courts is authorized to do all things necessary to continue the efficient operation of the unified court system within the county of Richmond and the city of Staten Island during and after the judicial transition period.

§ 178-i. Judicial transition services. During the judicial transition period, the mayor and the comptroller of the city of Staten Island and the mayor and the comptroller of the city of New York are authorized to enter into agreements relating to the provision of municipal services for the courts within the city of Staten Island. Such municipal services may include, but shall not be limited to, correctional services.

§ 178-j. Effect of existing collective bargaining agreements. Notwithstanding any other provision of law:

(1) The provisions of this article shall not alter any existing collective negotiating unit of nonjudicial employees or any provision of a collective negotiating agreement in effect on the effective date of this article.

(2) To the extent permitted by the state constitution, where a judicial or nonjudicial officer or employee of the unified court system is required as a condition of his or her continued employment to reside in the city of New York and, on the effective date of this article, he or she resides in the county of Richmond, such officer or employee shall be deemed to reside in the city of New York for so long as he or she remains in his or her position, provided he or she continues to reside in the county or in the city of New York.

(3) The nonjudicial personnel of the courts affected by this article in office on the effective date of this article shall, to the extent practicable, be continued without diminution of salaries and with the

same status and rights in the courts continued in the county of Richmond.

§ 7-001. Section 31 of the public housing law, as amended by chapter 829 of the laws of 1947, is amended to read as follows:

§ 31. Scope of authority's jurisdiction. The territorial jurisdiction of an authority established for a city or village shall be coterminous with the territorial limits of such city or village, and the territorial jurisdiction of an authority established for a town shall include all such town, except that such territorial jurisdiction shall not include any territory that lies within the boundaries of any village, whether such village has or has not established an authority. The members of such town authority shall if they consent and when authorized by resolutions of the town board and the village board, act as the authority in and for said village, the same as if it had been created especially for said village.

The foregoing notwithstanding, the New York city housing authority, the creation and establishment of which was validated pursuant to section four hundred of this chapter, shall continue to have territorial jurisdiction for the five counties which had constituted parts of the city of New York prior to the establishment of the city of Staten Island.

§ 7-002. Subdivision 3 of section 402 of the public housing law, as added by chapter 96 of the laws of 2013, is amended to read as follows:

3. a. The authority shall consist of seven members appointed by the mayor, one of whom shall be designated by the mayor as [~~chairman~~] chairperson removable at his or her pleasure. The term of office of each member other than the [~~chairman~~] chairperson shall be three years, provided, however, that the initial appointments of the six members other than the [~~chairman~~] chairperson shall be as follows: two shall be appointed for one-year terms, two shall be appointed for two-year terms, and two shall be appointed for three-year terms. The mayor shall file with the commissioner of housing a certificate of appointment of the [~~chairman~~] chairperson and of each member. Any member other than the [~~chairman~~] chairperson may be removed by the mayor upon filing in the office of the commissioner of citywide administrative services and serving upon the member the reasons therefor. Such document setting forth the reasons shall be made available to the general public, which shall include but not be limited to publishing the reasons on the New York city housing authority's website. Three of such members shall be a tenant of record or an authorized member of the tenant household, in good standing, residing in one of the federal projects owned or operated by the authority, provided, however, that for the initial appointments of the three such members, one shall be among the members initially appointed for one-year terms, one shall be among the members initially appointed for two-year terms, and one shall be among the members initially appointed for three-year terms. A vacancy in the office of a member other than the [~~chairman~~] chairperson occurring otherwise than by expiration of term shall be filled for the unexpired term. Further, any vacancy in the office of a tenant member shall only be filled by the appointment of an eligible tenant member, and such appointment shall be made within ninety days of such vacancy.

b. Notwithstanding paragraph a of this subdivision, upon the establishment of a city of Staten Island and for so long as the New York city housing authority shall have territorial jurisdiction in the city of Staten Island, such authority shall consist of eight members, the eighth of whom shall be appointed by the mayor of Staten Island and shall serve

for a five-year term. The mayor of the city of Staten Island shall file with the commissioner of housing and the chairperson of the New York city housing authority a certificate of appointment of such member. Such member may be removed by the mayor of Staten Island for cause after a public hearing. Such member may be of any political party. A vacancy in the office of such member occurring other than by expiration of a term shall be filled for the unexpired term.

§ 7-003. Section 455 of the education law, as amended by chapter 724 of the laws of 1976, is amended to read as follows:

§ 455. Relationship with the board of education and the city of New York. 1. In order most effectively to carry out its corporate purposes, the fund shall cooperate with the director of management and budget and the board of education of the city of New York in matters relating to land acquisition and capital planning for school buildings and facilities. During the course of construction, reconstruction, rehabilitation and improvement of combined occupancy structures the fund shall consult with personnel of such board as the work progresses in matters relating to space requirements, site plans, architectural concept, and substantial changes in the plans and specifications therefor, and in matters relating to the original furnishings, equipment, machinery and apparatus needed to furnish and equip the school portion of such buildings and structures, upon the completion of work. The board, on its part, shall perform such functions and services for the fund as may be requested and the fund shall pay to the board, from any monies of the fund available for such purpose, the reasonable cost of such functions and services.

2. Notwithstanding subdivision one of this section, upon the establishment of a city of Staten Island, with respect to any fund activities to take place within such city of Staten Island, the fund shall cooperate with the mayor and comptroller of such city of Staten Island and the board of education of the city school district of the city of Staten Island in matters relating to land acquisition and capital planning for school buildings and facilities to the same extent as with the respective officials of the city of New York.

§ 7-004. Paragraph (c) of subdivision 1 of section 462 of the education law, as separately amended by chapters 724 and 729 of the laws of 1976, is amended to read as follows:

(c) (i) To assure the continued operation and solvency of the capital reserve fund for the carrying out of the public purposes of this article, provision is made in paragraph (a) of this subdivision for the accumulation in the capital reserve fund of an amount equal to the maximum amount of principal and interest maturing and becoming due and sinking fund payments required to be made in any succeeding fiscal year on all bonds of the fund then outstanding secured by the capital reserve fund. In order further to assure such maintenance of the capital reserve fund, the board of education shall annually request from the city of New York and pay over to the fund, for deposit in the capital reserve fund, such sum, if any, as shall be certified by the [~~chairman~~] chairperson of the fund to the board, the mayor and the director of management and budget of the city of New York as necessary to restore the capital reserve fund to an amount equal to the maximum amount of principal and interest maturing and becoming due and sinking fund payments required to be made in the next succeeding fiscal year on the bonds of the fund then outstanding secured by the capital reserve fund; provided, however, that such sum shall have been first appropriated by the city to the board or shall otherwise have been made lawfully available to the board for such purpose. The [~~chairman~~] chairperson of the

fund shall annually, not later than the fifteenth day of February in each year, make and deliver to the board, the mayor and the director of management and budget his **or her** certificate stating the amount, if any, required to restore the capital reserve fund to the amount aforesaid and the amount so stated, if any, shall be paid to the fund by the board during the then current fiscal year of the fund. In the event of the failure or inability of the board to pay over the stated amount to the fund on or before August first of the same year, the [~~chairman~~] **chairperson** of the fund shall forthwith make and deliver to the comptroller of the state of New York **and the mayor and comptroller of the city of Staten Island** a further certificate restating the amount so required and, after the comptroller of the state of New York shall have given written notice to the commissioner of education, the mayor and director of management and budget **and the mayor and comptroller of the city of Staten Island**, such amount shall be paid over to the fund by the comptroller of the state of New York out of the next payment of state aid apportioned**, first,** to the city of New York on behalf of the city school district of the city of New York for the support of common schools or such other aid or assistance payable in support of common schools as shall supersede or supplement such state aid for the support of common schools, including federal moneys apportioned by the state to the city of New York on behalf of the city school district for the support of common schools **and, thereafter, if such amounts are insufficient, from such similar aid payable to the city of Staten Island**. Any amount so paid over to the fund shall be deducted from the corresponding apportionment of state education aid or other aid or assistance for education otherwise credited to the board of education for its purposes and shall not obligate the state to make or entitle the city or the board of education **or city of Staten Island** to receive any additional or increased apportionment or payment of state aid for school purposes.

**(ii) Notwithstanding subparagraph (i) of this paragraph, on or after the first of January next succeeding the date on which this subparagraph shall have become a law, the fund shall not issue any bonds, notes or other obligations secured by a capital reserve fund into which state aid or other aid otherwise payable to the city of Staten Island is to be deposited pursuant to this paragraph, provided, however, the fund may issue refunding bonds to pay bonds previously issued, which refunding bonds may be so secured if the fund gives reasonable adequate notice of its intention to issue such refunding bonds to the mayor of the city of Staten Island and the comptroller of the city of Staten Island and both such officials are given a reasonable opportunity to participate at the meeting or meetings of the board of the fund at which action is taken to issue such refunding bonds.**

§ 7-005. Paragraph (c) of subdivision 3 of section 462 of the education law, as amended by chapter 474 of the laws of 1996, is amended to read as follows:

(c) **(i)** To assure the continued operation and solvency of the fund for the carrying out of the public purposes of this article, provision is made in paragraph (a) of this subdivision for the accumulation in a debt service reserve fund of an amount equal to the debt service reserve fund requirement on all bonds of the fund then outstanding secured by a debt service or debt service reserve fund. In order further to assure such maintenance of a debt service reserve fund, the board of education shall annually request from the city of New York and pay over to the fund after making the payment required by paragraph (c) of subdivision one of this section for deposit in a debt service reserve fund, such sum, if

any, as shall be certified by the [~~chairman~~] **chairperson** of the fund to the board, the mayor and the director of the budget of the city of New York as necessary to restore such debt service reserve fund to an amount equal to the debt service reserve fund requirement for the bonds of the fund secured by such debt service reserve fund; provided, however, that such sum shall have been first appropriated by the city to the board or shall otherwise have been made lawfully available to the board for such purpose. The [~~chairman~~] **chairperson** of the fund shall annually, not later than the fifteenth day of February in each year, make and deliver to the board, the mayor and the director of the budget his **or her** certificate stating the amount, if any, required to restore a debt service reserve fund to the amount aforesaid and the amount so stated after making the payment required by paragraph (c) of subdivision one of this section if any, shall be paid to the fund by the board during the then current fiscal year of the fund. In the event of the failure or inability of the board to pay over the stated amount to the fund on or before August first of the same year, the [~~chairman~~] **chairperson** of the fund shall forthwith make and deliver to the comptroller of the state of New York **and the mayor and comptroller of the city of Staten Island** a further certificate restating the amount so required and, after the comptroller of the state of New York shall have given written notice to the commissioner, the mayor and director of the budget **and the mayor and comptroller of the city of Staten Island**, such amount after making the payment required by paragraph (c) of subdivision one of this section shall be paid over to the fund by the comptroller of the state of New York out of the next payment of state aid apportioned**, first,** to the city of New York on behalf of the city school district of the city of New York for the support of common schools or such other aid or assistance payable in support of common schools as shall supercede or supplement such state aid for the support of common schools, including federal moneys apportioned by the state to the city of New York on behalf of the city school district for the support of common schools **and, thereafter, if such amounts are insufficient, from such similar aid payable to the city of Staten Island**. Any amount so paid over to the fund under paragraph (c) of subdivision one of this section shall be deducted from the corresponding apportionment of state education aid or other aid or assistance for education otherwise credited to the board of education **or the city of Staten Island** for its purposes and shall not obligate the state to make or entitle the city or the board of education **or the city of Staten Island** to receive any additional or increased apportionment or payment of state aid for school purposes.

**(ii) Notwithstanding subparagraph (i) of this paragraph, on or after the first of January next succeeding the date on which this subparagraph shall have become a law, the fund shall not issue any bonds, notes or other obligations secured by a debt service reserve fund into which state aid or other aid otherwise payable to the city of Staten Island is to be deposited pursuant to this paragraph, provided, however, the fund may issue refunding bonds to pay bonds previously issued, which refunding bonds may be so secured if the fund gives reasonable adequate notice of its intention to issue such refunding bonds to the mayor of the city of Staten Island and the comptroller of the city of Staten Island and both such officials are given a reasonable opportunity to participate at the meeting or meetings of the board of the fund at which action is taken to issue such refunding bonds.**

§ 7-006. Subdivision 1 of section 1045-c of the public authorities law, as added by chapter 513 of the laws of 1984, is amended to read as follows:

1. A corporation known as the New York city municipal water finance authority is hereby created for public purposes and charged with the duties and having the powers provided in this title. The authority shall be a body corporate and politic constituting a public benefit corporation. It shall be administered by a board of directors consisting of [~~seven~~] **eight** members as follows: the commissioner of environmental protection of the city, the state commissioner of environmental conservation, the director of management and budget of the city, the commissioner of finance of the city, two public members to be appointed by the mayor**, one public member to be appointed by the mayor of Staten Island** and one public member to be appointed by the governor. One public member appointed by the mayor shall serve for a term of one year, one public member appointed by the mayor shall serve for a term of two years, and the public [~~member~~] **members** appointed by the governor **and mayor of Staten Island** shall serve for a term of two years from January first next succeeding the date of their appointment. Their successors shall serve for terms of two years each. Members shall continue in office until their successors have been appointed and qualified. The mayor**, mayor of Staten Island** or the governor shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A public member may be removed by the mayor**, mayor of Staten Island,** or the governor, whichever appointed him **or her**, for cause, but not without an opportunity to be heard in person or by counsel, in his **or her** defense, upon not less than ten days' notice. The mayor shall select a [~~chairman~~] **chairperson** from among the directors appointed by him **or her** who shall serve in such capacity at his **or her** pleasure. The [~~chairman~~] **chairperson** shall preside over all meetings of the board of directors and shall have such other duties as may be prescribed by the board.

§ 7-007. Subdivision 2 of section 1045-f of the public authorities law, as added by chapter 513 of the laws of 1984, is amended to read as follows:

2. The water board shall consist of seven members**, six of which shall be** appointed by the mayor **and, the seventh of which shall be appointed by the mayor of Staten Island**. **The mayor of Staten Island shall fill the earlier of the first expiration of a term or the first vacancy occurring after the date of establishment of the city of Staten Island and any successor thereto.** Terms of office of the members shall be two years except that the terms of four of the board members first appointed shall be one year. At least one member shall have experience in the science of water resource development. No member shall be a director of the authority. The mayor shall appoint a [~~chairman~~] **chairperson** from among the members of the board. All members shall continue to hold office until their successors are appointed and qualified. Vacancies shall be filled in the manner provided for original appointments. Vacancies, occurring otherwise than by expiration of term of office, shall be filled in the same manner as original appointments for the unexpired terms.

§ 7-008. Subdivision 5 of section 1045-f of the public authorities law, as added by chapter 513 of the laws of 1984, is amended to read as follows:

5. The **appointing** mayor may remove any member for inefficiency, neglect of duty or misconduct in office after giving such member a copy

of the charges against such member and an opportunity to be heard and defended, in person or by counsel, upon not less than ten days' notice. If any member shall be so removed, the **appointing** mayor shall file in the office of the clerk of the city a complete statement of charges against such member, and the **appointing** mayor's findings thereon, together with a complete record of the proceedings.

§ 7-009. Paragraphs e and f of subdivision 1 of section 656 of the private housing finance law, as amended by chapter 174 of the laws of 1992, are amended to read as follows:

e. **(i)** To assure the continued operation and solvency of the corporation for the carrying out of its corporate purposes, provision is made in paragraph a of this subdivision for the accumulation in each capital reserve fund of an amount equal to the maximum capital reserve fund requirement. In order further to assure such maintenance of each capital reserve fund, there shall be paid by the city to the corporation for deposit in each capital reserve fund on or before the first day of April, in each year, such amount, if any, needed for the purpose of restoring each such capital reserve fund to the maximum capital reserve fund requirement for such fund, as shall be certified by the chairperson of the corporation to the mayor and the director of management and budget on or before the first day of December next preceding; provided that any such amount shall have been first appropriated by or on behalf of the city for such purpose or shall have been otherwise made available from the proceeds of notes or bonds of the city authorized and issued pursuant to the local finance law for such purpose, which is hereby determined to be a specific object or purpose having a period of probable usefulness of five years. In the event of the failure or inability of the city to pay over to the corporation, in full, on or before such first day of April the amount so certified the chairperson of the corporation shall forthwith certify to the comptroller of the state of New York the amount remaining unpaid and thereupon the state comptroller shall pay to the corporation, out of the first moneys available for the next succeeding payments of [~~(i)~~] **(A)** state aid apportioned to the city of New York **and, to the extent the amounts available therefor are insufficient, state aid apportioned to the city of Staten Island,** as per capita aid for the support of local government pursuant to section fifty-four of the state finance law or [~~(ii)~~] **(B)** such other aid or assistance payable by the state to the city **and to the extent the amounts available therefor are insufficient, such aid or assistance payable by the state to the city of Staten Island** and not otherwise allocated as shall supersede or supplement such state per capita aid, including federal moneys apportioned to the city **and, to the extent the amounts available therefor are insufficient, such moneys apportioned to the city of Staten Island** by the state, such amount remaining unpaid, after giving written notice to the director of management and budget of each amount to be paid out of such state aid, until the amount in each such capital reserve fund is restored to the maximum capital reserve fund requirement thereof; provided, however, that prior to the issuance of any notes or bonds of the corporation pursuant to this article the city shall have enacted a local law authorizing payments from such sources into such a fund so long as any notes or bonds of the corporation shall be outstanding and unpaid, and provided further that moneys, if any, payable to the city university construction fund pursuant to the provisions of the city university construction fund act shall be paid, in full, to such fund, prior to any payments therefrom to the corporation. Any amount so paid over to the corporation shall be

deducted from the corresponding apportionment of such per capita state aid otherwise payable to the city of New York **or the city of Staten Island, as applicable**, and shall not obligate the state to make nor entitle the city **or the city of Staten Island** to receive any additional apportionment or payment of per capita state aid. All amounts paid over to the corporation as provided in this [~~paragraph~~] **subparagraph**, including amounts paid by the state comptroller out of payments of such state aid, shall constitute and be accounted for as non-interest bearing loans by the city **or the city of Staten Island, as applicable** to the corporation and, subject, subordinate and junior to the rights of the holders of any notes or bonds of the corporation theretofore or thereafter issued, shall be repaid to the city from [~~(i)~~] **(A)** moneys in such capital reserve fund in excess of the maximum capital reserve fund requirement thereof or [~~(ii)~~] **(B)** any moneys of the corporation not required for any other of its corporate purposes.

**(ii) Notwithstanding subparagraph (i) of this paragraph, on or after the first of January next succeeding the date on which this subparagraph shall have become a law, the corporation shall not issue any bonds, notes or other obligations secured by a capital reserve fund into which per capita state aid or other aid otherwise payable to the city of Staten Island is to be deposited pursuant to this subparagraph, provided, however, the corporation may issue refunding bonds to pay bonds previously issued, which refunding bonds may be so secured if the corporation gives reasonable adequate notice of its intention to issue such refunding bonds to the mayor of the city of Staten Island and the comptroller of the city of Staten Island and both such officials are given a reasonable opportunity to participate at the meeting or meetings of the board of the corporation at which action is taken to issue such refunding bonds.**

f. In the event the chairperson of the corporation shall certify to the mayor and director of management and budget or to the state comptroller any amount necessary to restore a capital reserve fund to the maximum capital reserve fund requirement thereof pursuant to subdivision e of this section, the chairperson shall simultaneously deliver to **the mayor of the city of Staten Island and the comptroller of the city of Staten Island and additionally to** such persons a statement of the cause or causes of such capital reserve fund deficiency and the measures to be taken by the corporation or the department of housing preservation and development to insure repayment of any loans made by the city **or the city of Staten Island** to the corporation, including amounts paid by the state comptroller out of payments of state aid, for the purpose of restoring such capital reserve fund to the maximum capital reserve fund requirement thereof and to prevent the recurrence of any such deficiency.

§ 7-010. Subdivision 4 of section 1680-b of the public authorities law, as amended by chapter 62 of the laws of 1988, is amended to read as follows:

4. In the event that a participating municipality fails to pay to the authority when due all or part of the rentals and other payments payable pursuant to any lease, sublease or agreement with the authority, the chairman or another officer of the authority shall certify at the times provided in this subdivision the amount of rentals and other payments then due from such participating municipality and unpaid. The state comptroller, upon receipt of such certificate, shall deduct the amount of such rentals and other payments as remains unpaid to the authority first from the aid payable to such participating municipality from the

court facilities incentive aid fund established by section ninety-four of the state finance law and, then, from the next succeeding payments of state aid apportioned to such participating municipality, as revenue sharing, per capita aid, and any other aid pursuant to section fifty-four of the state finance law and, then, from the next succeeding payments of state aid for any local governmental administrative costs that are reimbursable to the participating municipality pursuant to state law and, then, from the next succeeding payments of state aid from moneys appropriated pursuant to section six hundred eight of the public health law and pursuant to section ten-c of the highway law; provided, however, that the right of the authority to the payment of any amount deducted by the state comptroller pursuant to this section from per capita aid apportioned to the city of New York **or, to the extent insufficient, the city of Staten Island** shall be subject and subordinate to the rights of the city university construction fund pursuant to section sixty-two hundred seventy-nine of the education law, the New York city housing development corporation pursuant to section six hundred fifty-six of the private housing finance law, the trustees of the police pension fund pursuant to paragraph e of subdivision seven of section fifty-four of the state finance law, and the municipal assistance corporation for the city of New York pursuant to section three thousand thirty-six-a of this chapter and subdivision one of section ninety-two-e of the state finance law. In order to insure that the amount of rentals and other payments due and unpaid by a participating municipality are paid, the authority on or within thirty days prior to January twenty-fifth, April twenty-fifth, July twenty-fifth and October twenty-fifth of each year shall certify to the state comptroller the amount of rentals and other payments then due and unpaid by each participating municipality pursuant to any lease, sublease or other agreement. The amount required to be deducted by the state comptroller pursuant to this subdivision shall be deducted from such aid, whether or not the state aid from which such deduction is to be made is then payable to the participating municipality, and thereupon paid to the authority. The amount of state aid payable to such participating municipality shall be reduced by the amount deducted by the state comptroller notwithstanding the amount appropriated and apportioned by the state to such participating municipality, and the state shall not be obligated to make and the participating municipality shall not be entitled to receive any additional apportionment or payment of such state aid. Nothing shall be construed to create an obligation upon the state to appropriate moneys, to preclude the state from reducing the amount of moneys appropriated or level of assistance provided, or to preclude the state from altering or modifying the manner in which it provides for or provides assistance.

§ 7-011. Section 1727 of the public authorities law is amended by adding a new subdivision 9 to read as follows:

**9. Notwithstanding the provisions of this section or any other provision of law to the contrary, the authority shall continue its corporate existence regardless of the alteration of the composition of the board of education of the city school district of the city of New York caused by the incorporation of the city of Staten Island and the establishment of the city school district of the city of Staten Island.**

§ 8-001. Subdivision 1 of section 23 of the executive law, as amended by chapter 385 of the laws of 2017, is amended to read as follows:

1. Each county, except **Richmond county and** those **counties** contained within the city of New York, and each city with a population of one million or more, shall prepare a comprehensive emergency management

plan. Each city with a population of less than one million, town and village is authorized to prepare a comprehensive emergency management plan. The disaster preparedness commission shall provide assistance and advice for the development of such plans. Each city with a population of less than one million, town and village plan shall be coordinated with the county plan.

§ 8-002. Subdivision 1 of section 101-b of the executive law, as added by chapter 1214 of the laws of 1971, is amended to read as follows:

1. Definitions. As used in this section,

a. "Agency" means any state board, bureau, commission, department, division or officer authorized by law to adopt rules.

b. "Rule" means the whole or part of each agency statement of general applicability or regulation or code that implements or applies law, including the amendment, suspension or repeal thereof.

c. "Municipal corporation" means [~~a~~] **any** county outside the [~~city~~] **cities** of New York **and Staten Island**, a city, a town, a village or a school district.

d. "Governing body" means:

(1) In a county, a board of supervisors, county legislature or other body vested by its charter, other law or other valid enactment with jurisdiction to enact local laws;

(2) In a city, the board of aldermen, a common council, commission or other body vested by its charter or other law with jurisdiction to enact ordinances or local laws;

(3) In a town, the town board;

(4) In a village, the board of trustees; and

(5) In a school district, the board of education, board of trustees or sole trustee.

§ 8-003. Intentionally omitted.

§ 8-004. Subdivisions 1, 2, 3, 4 and 6 of section 246 of the executive law, subdivisions 1, 2 and 3 as amended by section 10 of part D of chapter 56 of the laws of 2010, subdivision 4 as amended by section 102 of part WWW of chapter 59 of the laws of 2017, and subdivision 6 as added by chapter 479 of the laws of 1970 and as renumbered by chapter 813 of the laws of 1985, are amended to read as follows:

1. The program of state aid to county probation services shall be administered by the division of criminal justice services with the advice of the state probation commission and the director of the office of probation and correctional alternatives. Funds appropriated to the division for distribution as state aid to county probation services [~~and~~]**,** to the probation services of New York city **and to the probation services of the city of Staten Island** shall be distributed by the division in accordance with rules and regulations adopted by the commissioner of the division of criminal justice services after consultation with the state probation commission and the director of the office of probation and correctional alternatives.

2. State aid shall be granted to the city of New York**, the city of Staten Island** and the respective counties outside [~~the city of New York~~] **such cities** for expenditures to be incurred by the county or [~~city~~] **such cities** in maintaining and improving local probation services subject to amounts appropriated for this purpose. State aid grants shall not be used for expenditures for capital additions or improvements, or for debt service costs for capital improvements.

State aid shall be granted by the commissioner of the division of criminal justice services after consultation with the state probation

commission and the director of the office of probation and correctional alternatives, provided the respective counties **or the city of Staten Island** or the city of New York conform to standards relating to the administration of probation services as adopted by the commissioner of the division of criminal justice services after consultation with the state probation commission and the director of the office of probation and correctional alternatives.

3. Applications from counties **or the city of Staten Island** or the city of New York for state aid under this section shall be made by filing with the division of criminal justice services, a detailed plan, including cost estimates covering probation services for the fiscal year or portion thereof for which aid is requested. Included in such estimates shall be clerical costs and maintenance and operation costs as well as salaries of probation personnel and such other pertinent information as the commissioner of the division of criminal justice services may require. Items for which state aid is requested under this section shall be duly designated in the estimates submitted. The commissioner of the division of criminal justice services, after consultation with the state probation commission and the director of the office of probation and correctional alternatives, shall approve such plan if it conforms to standards relating to the administration of probation services as specified in the rules adopted by him or her.

4. An approved plan and compliance with standards relating to the administration of probation services promulgated by the commissioner of the division of criminal justice services shall be a prerequisite to eligibility for state aid.

The commissioner of the division of criminal justice services may take into consideration granting additional state aid from an appropriation made for state aid for county probation services for counties **or the city of Staten Island** or the city of New York when a county **or the city of Staten Island** or the city of New York demonstrates that additional probation services were dedicated to intensive supervision programs and intensive programs for sex offenders. The commissioner shall grant additional state aid from an appropriation dedicated to juvenile risk intervention services coordination by probation departments which shall include, but not be limited to, probation services performed under article three of the family court act. The administration of such additional grants shall be made according to rules and regulations promulgated by the commissioner of the division of criminal justice services. Each county **and the city of Staten Island** and the city of New York shall certify the total amount collected pursuant to section two hundred fifty-seven-c of this chapter. The commissioner of the division of criminal justice services shall thereupon certify to the comptroller for payment by the state out of funds appropriated for that purpose, the amount to which the county **or the city of Staten Island** or the city of New York shall be entitled under this section. The commissioner shall, subject to an appropriation made available for such purpose, establish and provide funding to probation departments for a continuum of evidence-based intervention services for youth alleged or adjudicated juvenile delinquents pursuant to article three of the family court act or for eligible youth before or sentenced under the youth part in accordance with the criminal procedure law. Such additional state aid shall be made in an amount necessary to pay one hundred percent of the expenditures for evidence-based practices and juvenile risk and evidence-based intervention services provided to youth sixteen years of age or older when such services would not otherwise have been provided

absent the provisions of [~~a~~] **part WWW of** chapter **fifty-nine** of the laws of two thousand seventeen [~~that increased the age of juvenile jurisdiction~~].

6. The director, after consultation with the state probation commission, may authorize or require the comptroller to withhold the payment of state aid to any county, **or the city of Staten Island** or the city of New York, in the event that such county, **or the city of Staten Island** or the city of New York, (a) fails to conform to standards of probation administration as formulated by the director pursuant to this section, (b) discontinues or fails to follow an approved plan, or (c) fails to enforce in a satisfactory manner rules promulgated pursuant to this section, or laws now in effect or hereafter adopted which relate in any manner to the administration of probation services.

§ 8-004-a. The second undesignated paragraph of subdivision 4 of section 246 of the executive law, as amended by section 103 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

The commissioner of the division of criminal justice services may take into consideration granting additional state aid from an appropriation made for state aid for county probation services for counties **or the city of Staten Island** or the city of New York when a county **or the city of Staten Island** or the city of New York demonstrates that additional probation services were dedicated to intensive supervision programs and intensive programs for sex offenders. The commissioner shall grant additional state aid from an appropriation dedicated to juvenile risk intervention services coordination by probation departments which shall include, but not be limited to, probation services performed under article three of the family court act. The administration of such additional grants shall be made according to rules and regulations promulgated by the commissioner of the division of criminal justice services. Each county **and the city of Staten Island** and the city of New York shall certify the total amount collected pursuant to section two hundred fifty-seven-c of this chapter. The commissioner of the division of criminal justice services shall thereupon certify to the comptroller for payment by the state out of funds appropriated for that purpose, the amount to which the county **or the city if Staten Island** or the city of New York shall be entitled under this section. The commissioner shall, subject to an appropriation made available for such purpose, establish and provide funding to probation departments for a continuum of evidence-based intervention services for youth alleged or adjudicated juvenile delinquents pursuant to article three of the family court act or for eligible youth before or sentenced under the youth part in accordance with the criminal procedure law.

§ 8-005. Subdivision 1 of section 255 of the executive law, as added by chapter 603 of the laws of 1973, is amended to read as follows:

1. There is hereby created a department of probation in and for the city of New York to have charge of all probation work in the supreme, family and criminal courts in the counties of Bronx, Kings, New York[~~,~~] **and** Queens [~~and Richmond~~].

§ 8-006. The executive law is amended by adding a new section 255-a to read as follows:

**§ 255-a. Probation in the city of Staten Island. 1. There is hereby created a department of probation in and for the city of Staten Island to have charge of all probation work in the supreme, family and other criminal courts in the county of Richmond.**

**2. The head of such department shall be a director of probation appointed by the mayor of the city of Staten Island to serve during the**

pleasure of the mayor. The director shall have charge of the administration of the department and shall be responsible for carrying out the functions of the department including intake, investigation, supervision, conciliation and pre-disposition social treatment in cases coming to the courts referred to in this section. The director may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the department as he or she may determine necessary for efficient operation thereof. The director also shall have the power to appoint and remove such deputy directors, assistants, probation officers and other employees as may be needed for the performance of the duties of the department and may prescribe their duties and fix their compensation, within appropriations made available therefor by the city of Staten Island and subject to all applicable civil service laws and rules and regulations. The director may, in his or her discretion, appoint volunteer probation officers, when necessary, provided they have the qualifications required of salaried officers, but no such volunteer probation officer shall receive pay from the public funds for his or her services. The city of Staten Island shall make the necessary appropriation for the salaries of the director and of all officers and employees of the department as referred to herein, as well as for the expenses actually and necessarily incurred by such director, officers and employees in the performance of their duties.

3. The director shall discharge his or her powers and responsibilities in accordance with all laws and rules applicable to probation and with the general rules regulating methods and procedure in the administration of probation as adopted from time to time pursuant to section two hundred forty-three of this chapter. The director may adopt departmental rules, not inconsistent with law or the aforesaid general rules, to regulate the policies, programs, standards, and methods of procedure in relation to probation and the powers and duties of officers and employees as in the director's judgment are deemed proper.

4. Notwithstanding any other provision of law or of the Staten Island city charter or administrative code, any duly appointed officer or employee of such probation department may reside in any county within the state.

§ 8-007. Subdivisions 1 and 4 of section 257-c of the executive law, as added by chapter 55 of the laws of 1992, are amended to read as follows:

1. Notwithstanding any other provision of law, every county, the city of Staten Island and the city of New York, may adopt a local law requiring individuals currently serving or who shall be sentenced to a period of probation upon conviction of any crime under article thirty-one of the vehicle and traffic law to pay to the local probation department with the responsibility of supervising the probationer an administrative fee of thirty dollars per month. The department shall waive all or part of such fee where, because of the indigence of the offender, the payment of said surcharge would work an unreasonable hardship on the person convicted, his or her immediate family, or any other person who is dependent on such person for financial support.

4. In the event of non-payment of any fees which have not been waived by the local probation department, the county, the city of Staten Island or the city of New York may seek to enforce payment in any manner permitted by law for enforcement of a debt.

§ 8-008. Subdivision 3 of section 262 of the executive law, as amended by section 28 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

3. Upon approval by the board, by a majority of its members, any county outside the [~~city~~] **cities** of New York **and Staten Island** acting through its county executive, and upon approval of the local legislative body, may submit a proposed service plan to the office for approval. The city of New York acting through the mayor and upon approval by the board of estimate **and the city of Staten Island acting through the mayor and upon approval by the common council** may submit a proposed service plan to the office for approval.

§ 8-009. Subdivisions 1 and 2 of section 266 of the executive law, as added by chapter 338 of the laws of 1989, are amended to read as follows:

1. Counties and the [~~city~~] **cities** of New York **and Staten Island** may submit approved amendments for alcohol and substance abuse programs as defined in this article as part of or in addition to an approved plan. In accordance with this article, nothing in this section shall prohibit the development of regional alcohol and substance abuse programs by two or more counties**, the city of Staten Island** or cities with a population of one million or more.

2. Such approved amendments shall include a statement by the county or the city of New York **or the city of Staten Island** indicating such municipality's understanding that funding for eligible alcohol and substance abuse programs shall be in accordance with subdivision four of this section and the municipality's commitment to meet the funding requirements as set forth in such subdivision.

§ 8-010. Section 267 of the executive law, as amended by section 33 of part A of chapter 56 of the laws of 2010, is amended to read as follows:

§ 267. Office reports. The office shall submit to the governor, the temporary president of the senate, the speaker of the assembly, the [~~chairman~~] **chairperson** of the senate crime and correction committee and the [~~chairman~~] **chairperson** of the assembly committee on codes by October first of each year its evaluation and assessment of this alternatives planning and programming effort by the counties. Such report shall include, but not be limited to, the status of the development of such plans, the approval and implementation of such plans, the success of the programs, in terms of their utilization, effect on jail population, results of the analyses provided counties and the [~~city~~] **cities** of New York **and Staten Island** on the relationship between alcohol, drugs and crime and the success of the eligible alcohol and substance abuse programs and sentencing decisions together with any recommendations with respect to the proper operation or improvement of planning and implementation of effective alternatives to detention and alternatives to incarceration programs in counties.

§ 8-011. Subdivisions 1 and 7 of section 530 of the executive law, subdivision 1 as amended by section 4 of subpart B of part Q of chapter 58 of the laws of 2011, subdivision 7 as amended by section 21 of part K of chapter 56 of the laws of 2019, are amended to read as follows:

1. Definitions. As used in this section, the term "municipality" shall mean a county, **the city of Staten Island** or a city having a population of one million or more.

7. The agency administering detention for each county **and the city of Staten Island** and the city of New York shall submit to the office of children and family services, at such times and in such form and manner and containing such information as required by the office of children and family services, an annual report on youth remanded pursuant to article three or seven of the family court act who are detained during each calendar year including, commencing January first, two thousand

twelve, the risk level of each detained youth as assessed by a detention risk assessment instrument approved by the office of children and family services provided, however, that the report due January first, two thousand twenty-one and thereafter shall not be required to contain any information on youth who are subject to article seven of the family court act. The office may require that such data on detention use be submitted to the office electronically. Such report shall include, but not be limited to, the reason for the court's determination in accordance with section 320.5 or seven hundred thirty-nine of the family court act to detain the youth; the offense or offenses with which the youth is charged; and all other reasons why the youth remains detained. The office shall submit a compilation of all the separate reports to the governor and the legislature.

§ 8-012. Subdivisions 1, 2 and 4 of section 214 of the elder law are amended to read as follows:

1. Definitions. As used in this section, the following words shall have the following meanings:

(a) "Designated agency" shall mean an agency which is designated by the chief executive officer of the county if there be one, or otherwise the governing board of such county, or the chief executive officer of the city of New York **or the mayor of the city of Staten Island**, or the governing board of an Indian tribal council; which is either a unit of county government or the city of New York **or the city of Staten Island** or an Indian tribal organization or a private non-profit agency, and which is the area agency on aging created pursuant to the federal older Americans act of 1965.

(b) "Elderly person" shall mean a person sixty years of age or older.

(c) "County" shall mean a county, as defined in section three of the county law, except that the city of New York shall be considered one county.

(d) "Base year expenditures" and "base year services" shall mean the level of expenditures and services in the year prior to the first year for which a county plan is submitted or in such county's two thousand five fiscal year, whichever is greater.

(e) "Community services" shall mean services for elderly persons which are provided by a public or governmental agency or non-profit agency, and which are provided in the home of an elderly person or in community settings such as senior citizens centers, housing projects, or agency offices. Such services shall not include any services provided pursuant to the public health law other than home care services.

(f) "Community service projects" shall mean community services financed pursuant to paragraph (b) of subdivision four of this section.

(g) "County plan" shall mean a plan for community services prepared by a county pursuant to this section.

(h) "Non-profit agency" shall mean a corporation organized or existing pursuant to the not-for-profit corporation law.

(i) "Program year" shall mean the period from April first through March thirty-first of the following calendar year.

(j) "First program year" for a county shall mean the initial year for which the county has received approval for its county plan.

2. County plans for improving the availability of community services to the elderly. (a) Counties with a designated agency are required to submit a county plan for a two-, three-, or four-year period determined by the director, with an annual update containing a budget request for the forthcoming program year and such other information as shall be required by the director, for improving the delivery of community

services for elderly persons in the format prescribed by the director. The plan for the city of New York **or the plan for the city of Staten Island** shall specifically address the needs of each county within such city. Such plan shall be a comprehensive description of the manner in which the county intends to address the needs of elderly persons living in the county through improved coordination of existing community services and by the development of any new or expanded community service projects which will improve the delivery of services to the elderly. Such plan shall contain:

(1) a statement of goals and objectives for addressing the needs of elderly persons in the county, an assessment of the needs of elderly persons residing in the county, a description of public and private resources that currently provide community services to elderly persons within the county, a description of intended actions to consolidate and coordinate existing community services administered by county government, a description of the intended actions to coordinate congregate services programs for the elderly operated within the county pursuant to section two hundred seventeen of this title with other community services for the elderly, a description of the means to coordinate other community services for elderly persons in the county with those administered by county government, and a statement of the priorities for the provision of community services during the program period covered by such plan;

(2) an identification of community service projects to be developed to improve the delivery of services, a budget request for approval for the forthcoming year which individually identifies each community service project to be funded pursuant to paragraph (b) of subdivision four of this section, letters of comment from the appropriate local agencies on the relationship and expected impact of the proposed community service projects, assurances that community service projects will provide services to those most in need, an indication of fee schedules by which elderly persons participating in community service projects may contribute to the costs of such projects, and an indication of how the effectiveness of such community service projects will be evaluated;

(3) an identification of planning, coordination, and administrative activities necessary to achieve the goals and objectives of the plan, together with a budget request for such activities for approval for the forthcoming year to be funded pursuant to paragraph (a) of subdivision four of this section, and assurances by the county that it will comply with the requirements of state and federal law; and

(4) such other components as may be required pursuant to regulations promulgated by the director.

(b) Such county plan for community services or annual update shall be prepared by the designated agency and approved by the chief executive officer of the county, if there be one, or otherwise the governing board of the county, or the chief executive of the city of New York **or the mayor of the city of Staten Island** and submitted to the director no later than ninety days prior to the beginning of the program period covered by such plan or annual update. Prior to a submission of a county plan or annual update to the director for approval, the designated agency shall conduct such public hearings as may be required by regulations of the director, provided that there shall be at least one such hearing, and one in each county contained within the city of New York **or the city of Staten Island**.

(c) The director shall review such county plan and may approve or disapprove such plan, or any part, program, or project within such plan,

and shall propose such modifications and conditions as are deemed appropriate and necessary. Compliance with paragraphs (a) and (b) of this subdivision shall be the basis for approval of a county plan. The director shall establish by regulation the dates for notifying the designated agency of approval or disapproval of a county plan. In the event the director shall disapprove the proposed county plan, the county submitting such application shall be afforded an opportunity for an adjudicatory hearing, as prescribed by article three of the state administrative procedure act.

(d) Notwithstanding any provision of this section, nothing contained in this section shall give the director or a designated agency any administrative, fiscal, supervisory, or other authority whatsoever over any plans, programs or expenditures authorized pursuant to titles eighteen, nineteen and twenty of the federal social security act, or over any unit of state or local government.

(e) Counties with a designated agency may submit to the director a letter of intent, in the form and by the date prescribed by the director with the approval of the director of the budget, evidencing the commitment of the county to develop a county home care plan for functionally impaired elderly.

(f) Within the amounts appropriated therefor, counties submitting an approved letter of intent pursuant to paragraph (e) of this subdivision shall be eligible for reimbursement of one hundred percent of the approved expenditures for preparing a county home care plan for functionally impaired elderly. Such a grant-in-aid shall be available to a county only once and shall be limited to one-half the amount available to such county pursuant to subparagraph one of paragraph (a) of subdivision four of this section; provided however that in either of the two years immediately following its first submission of a home care plan for functionally impaired elderly, a county which does not receive state aid during such year for expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to paragraph (j) of subdivision four of this section, may apply for reimbursement of one hundred percent of the approved expenditures for revising such home care plan, limited to one-quarter the amount available to such county pursuant to subparagraph one of paragraph (a) of subdivision four of this section.

(g) County home care plans for functionally impaired elderly prepared pursuant to this subdivision shall include a comprehensive description of all aspects of home care, non-institutional respite, case management, and ancillary services available to elderly persons in the county; a description of intended actions to coordinate such home care, non-institutional respite, case management, and ancillary services to functionally impaired elderly persons in their county provided under this section with other services to elderly persons; a proposal for expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services for functionally impaired elderly persons with unmet needs to support such persons' continued residence in their homes; and such other components as may be required pursuant to regulations promulgated by the director, including how the proposed expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services will be delivered to unserved or underserved populations.

(h) Such county home care plan for functionally impaired elderly shall be prepared by the designated agency after consultation with the social services district and the local public health agency, and shall be

approved by the chief executive officer of the county, if there be one, or otherwise the governing board of the county, or the chief executive of the city of New York **or the mayor of the city of Staten Island**, and submitted to the director for approval by such date as may be specified by regulation. The director shall not approve such county home care plan for functionally impaired elderly unless it complies with the standards and regulations issued pursuant to this section.

4. State aid. (a) County plans for improving the availability of community services to the elderly:

(1) within the amounts appropriated therefor, counties with an approved county plan shall be eligible for reimbursement of one hundred percent of the annual approved expenditures for the preparation and revision of such county plan, evaluation of projects contained within such county plan, execution of interagency agreements necessary to carry out the plan, actions to consolidate, combine or collocate services within the county, and such other costs of the designated agency necessary to implement such county plan, provided that the total annual amount payable to a county pursuant to this subparagraph shall not exceed the sum of one dollar for each elderly person residing in the county, or seventy-five thousand dollars, whichever is less, and further provided that for the city of New York **or the city of Staten Island** such amount shall not exceed one dollar for each elderly person residing in [~~the~~] **such** city or three hundred seventy-five thousand dollars, whichever is less. Notwithstanding the foregoing limitations, counties with a population of less than twenty thousand elderly persons shall be eligible for reimbursement of one hundred percent of such annual approved expenditures provided that the total annual amount of such reimbursement per county shall not exceed twenty thousand dollars.

(2) within the amounts appropriated therefor, a county may receive a grant-in-aid of up to twenty-five per centum of the total annual amount that such county is eligible to receive pursuant to subparagraph one of this paragraph for the cost of preparing an initial county plan in accordance with this section. Such a grant-in-aid shall be available to a county only once and shall be in addition to the reimbursement received by the county pursuant to subparagraph one of this paragraph for the first program year. A request for such a grant-in-aid shall be accompanied by a letter of intent in the form prescribed by the director evidencing the commitment of the county to develop a county plan for community services and shall be submitted to the director at least six months prior to the beginning of the first program year.

(b) Community service projects:

(1) within the amounts appropriated therefor, counties having an approved county plan shall be eligible for reimbursement by the state for expenditures for approved community service projects pursuant to this section. Such state reimbursement shall not exceed thirty-three thousand six hundred dollars or four dollars twenty cents for each elderly person residing in the county, whichever is greater. The annual state reimbursement eligibility shall be at a rate of seventy-five percent of the total annual expenditures for such approved programs.

(2) the director shall provide by regulation that certain non-county moneys and in-kind equivalents may be used to comprise the county share of such total annual approved expenditures, provided that such county share shall not include cost-sharing received from elderly persons receiving expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to paragraph (k) of this subdivision or moneys received from

the federal government for services for the elderly allocated to the states or local governments according to population or other such non-competitive basis.

(3) the director shall provide by regulation the requirements for any participant contributions and fee schedules used for community service projects and the manner for the accounting and use of any such revenue.

(c) Reimbursement pursuant to this section shall not be available for expenditures for base year services otherwise provided without cost, or to replace base year expenditures made by the county or any other service provider irrespective of the source of funds for such services.

(d) Reimbursement shall not be available to community services projects funded pursuant to paragraph (b) of this subdivision or to expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services funded pursuant to paragraph (j) of this subdivision for services provided to elderly persons who are eligible for or are receiving services to meet their needs pursuant to titles eighteen, nineteen or twenty of the federal social security act or any other governmental programs or for services provided to residents in adult residential care facilities which had previously been provided by the facility or which are required by law to be provided by such facility.

(e) For the purpose of determining the amount of state reimbursement for which a county is eligible pursuant to this section, the last preceding federal census or other census data approved by the comptroller shall be used. Funds appropriated by the state for the purpose of reimbursement for community services pursuant to this section shall be apportioned among the counties pursuant to the formula set forth in paragraph (b) of this subdivision by the director. Funds appropriated by the state for the purpose of reimbursement for expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to this section shall be apportioned among the counties by the director pursuant to the formula set forth in paragraph (j) of this subdivision.

(f) The comptroller may withhold the payment of state aid to any county in the event that such county alters or discontinues the operations approved by the director pursuant to this section or otherwise fails to comply with the regulations or requirements of the director.

(g) Counties shall submit claims for reimbursement after the end of each month or each quarter as required by and in accordance with procedures prescribed by the director. Reimbursement shall be available for approved expenditures incurred in accordance with an approved county plan for community services.

(h) Reimbursement pursuant to subparagraph one of paragraph (b) or paragraph (j) of this subdivision shall not be available for expenditures for community or expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services to elderly persons in the city of New York **and in the city of Staten Island** unless expenditures for such services are apportioned for services in each of the counties contained within such city in a manner which the director has determined by regulation substantially reflects the proportion that the number of elderly persons in that county bears to the total number of elderly persons in [~~the~~] **such** city as a whole. In determining whether reimbursement shall be available under paragraph (g) of this subdivision, the director shall ensure that expenditures were apportioned in accordance with the provisions of this paragraph.

(i) The director, within the amounts appropriated therefor and with the approval of the director of the budget, may authorize a county which has an approved home care plan for functionally impaired elderly to provide expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to such plan. Such services shall be limited to those services necessary to meet otherwise unmet needs and which support such elderly persons' continued residence in their homes. Needs will be determined pursuant to a standardized evaluation of functional impairment, available resources and such other relevant factors specified pursuant to regulations promulgated by the director. No expanded non-medical in-home services, non-institutional respite services, or ancillary services shall be provided to any individual pursuant to this section unless such expanded non-medical in-home services, non-institutional respite services, or ancillary services are accompanied by ongoing case management services in accordance with regulations promulgated by the director.

(j) Within the amounts appropriated therefor, counties authorized to provide expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to paragraph (i) of this subdivision shall be eligible for reimbursement by the state of up to seventy-five percent of allowable expenditures for approved services pursuant to this section up to the level authorized by the director. The director shall not authorize a level of state reimbursement pursuant to this paragraph which exceeds the sum of ninety-one thousand two hundred fifty dollars or seven dollars thirty cents for each elderly person residing in the county, whichever is greater, and shall proportionately reduce such sum for each county in any years for which appropriations are not sufficient to fully fund approved expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services for functionally impaired elderly in all counties with approved home care plans; provided however that in state fiscal years beginning on or after the first day of April, two thousand five, the director, with the approval of the director of the budget, may authorize state reimbursement in excess of these levels to the extent appropriations are available therefor.

(k) The director, with the approval of the director of the budget, shall provide by regulation the extent of cost-sharing to be required of elderly persons receiving expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to this section, which shall reflect such recipients' means to pay for such services and which will not affect their ability to remain in their homes; provided however that the director shall not authorize or direct the withholding of state aid pursuant to paragraph (f) of this subdivision prior to the first day of April, two thousand five, based on any county's failure or inability to comply with regulations promulgated pursuant to this paragraph. The full amount of cost-sharing actually received by any county from elderly persons receiving expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services shall be used by such county to expand either such county's program of community services or such county's program of expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to this section.

(l) Reimbursement pursuant to paragraph (j) of this subdivision shall not be available for expenditures for base year services otherwise

provided without cost, or to replace base year expenditures made by the county or any other service provider irrespective of the source of funds, or to replace community services expenditures pursuant to paragraph (b) of this subdivision.

(m) Counties shall submit claims for reimbursement for expanded in-home services, non-institutional respite services, case management services, and ancillary services to functionally impaired elderly as required by and in accordance with procedures prescribed by the director. Reimbursement shall be available for approved expenditures incurred in accordance with an approved county home care plan for functionally impaired elderly to the extent the director has authorized state aid for such services pursuant to paragraph (i) of this subdivision.

(n) The director shall provide by regulation that certain non-county moneys and in-kind equivalents may be used in part to compose the county share of total allowable expenditures pursuant to paragraph (j) of this subdivision, provided that such county share shall not include cost-sharing received from elderly persons receiving expanded non-medical in-home services, non-institutional respite services, case management services, and ancillary services pursuant to paragraph (k) of this subdivision or moneys received from the federal government for services for the elderly allocated to the states or local governments according to population or other such non-competitive basis.

§ 8-013. Subdivision 9 of section 140 of the executive law, as amended by chapter 861 of the laws of 1960, is amended to read as follows:

9. The clerks of the counties of New York, Kings, Queens, Richmond and Bronx shall each keep a book or card index file in which shall be registered the signature of the commissioners so filing such certificates; and the county clerk of any county in the city with whom such commissioner has filed a certificate of appointment shall, upon demand and upon payment of the sum of fifty cents, authenticate a certificate of acknowledgment or proof of oath taken before such commissioner of deeds, without regard to the county in the city in which such [~~acknowlg-ment~~] **acknowledgment** or proof was taken or oath administered, by subjoining or attaching to the original certificate of acknowledgment or proof or oath a certificate under his hand and official seal specifying that at the time of taking the acknowledgment or proof or oath the officer taking it was duly authorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature on the certificate of acknowledgment, proof or oath with the autograph signature deposited in his office by such officer, and that he verily believes the signature is genuine.

§ 8-014. Any person who resides in or maintains an office or other place of business in the city of Staten Island and who resides in the county of Richmond on the date of establishment of the city of Staten Island who holds an appointment as a commissioner of deeds from the preceding municipality shall be deemed to hold the appointment as commissioner of deeds from the common council of the city of Staten Island in accordance with the provisions of section 139 of the executive law. Such person shall continue to hold such office until his original appointment expires or is revoked pursuant to law.

§ 8-015. Section 56 of the social services law, as amended by chapter 863 of the laws of 1977, is amended to read as follows:

§ 56. City social services districts. The city of New York **and the city of Staten Island** shall have all the powers and duties of a social services district insofar as consistent with the provisions of the

special and local laws relating to such [~~city~~] **cities**. The officers thereof charged with the administration of public assistance and care shall have additional powers and duties of a commissioner of social services not inconsistent with the laws relating to said [~~city~~] **cities**.

§ 8-016. Section 57 of the social services law, as amended by chapter 863 of the laws of 1977, is amended to read as follows:

§ 57. Cities in county social services districts. Each city, other than the city of New York **and the city of Staten Island**, shall form part of the county social services district of the county in which it is situated and shall not assume any powers and responsibilities for the administration or expense of public assistance and care, in addition to those specified in subdivision two of section sixty-nine, except pursuant to the provisions of sections seventy-four and seventy-four-a of this chapter.

§ 8-017. Section 61 of the social services law is amended by adding a new subdivision 1-a to read as follows:

**1-a. The city of Staten Island is hereby constituted a city social services district.**

§ 8-018. Subdivision 1 of section 74 of the social services law, as added by chapter 863 of the laws of 1977, is amended to read as follows:

1. Each city, other than the city of New York **and the city of Staten Island**, which is responsible for one or more types of public assistance and care on the date this section becomes effective shall function under section seventy-four-a of this chapter.

§ 8-019. Section 86-a of the social services law, as amended by chapter 655 of the laws of 1978, is amended to read as follows:

§ 86-a. City public welfare funds. The taxes levied for public assistance and care in a city, or in a city public welfare district, shall be paid to the city treasurer, [~~or~~] the commissioner of finance in the city of New York **or the comptroller in the city of Staten Island**, and disbursed in accordance with the provisions of law relating to such city for the payment of bills and claims, provided such provisions of law are not inconsistent with the provisions of this chapter.

§ 8-020. Intentionally omitted.

§ 8-021. Subdivision 2 of section 209 of the social services law, as amended by chapter 71 of the laws of 1983, paragraphs (a), (b), (c), (d), (e) and (f) as amended by section 2 of part Z of chapter 56 of the laws of 2023, is amended to read as follows:

2. The following amounts shall be the standard of monthly need for determining eligibility for and the amount of additional state payments, depending on the type of living arrangement and the geographic area in which the eligible individual or the eligible couple resides:

(a) On and after January first, two thousand twenty-three, for an eligible individual living alone, $1,001.00; and for an eligible couple living alone, $1,475.00.

(b) On and after January first, two thousand twenty-three, for an eligible individual living with others with or without in-kind income, $937.00; and for an eligible couple living with others with or without in-kind income, $1,417.00.

(c) On and after January first, two thousand twenty-three, (i) for an eligible individual receiving family care, $1,180.48 if he or she is receiving such care in the city of New York**, the city of Staten Island** or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving family care in the city of New York**, the city of Staten Island** or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this

paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, $1,142.48; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

(d) On and after January first, two thousand twenty-three, (i) for an eligible individual receiving residential care, $1,349.00 if he or she is receiving such care in the city of New York**, the city of Staten island** or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving residential care in the city of New York**, the city of Staten Island** or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, $1,319.00; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

(e) On and after January first, two thousand twenty-three, (i) for an eligible individual receiving enhanced residential care, $1,608.00; and (ii) for an eligible couple receiving enhanced residential care, two times the amount set forth in subparagraph (i) of this paragraph.

(f) The amounts set forth in paragraphs (a) through (e) of this subdivision shall be increased to reflect any increases in federal supplemental security income benefits for individuals or couples which become effective on or after January first, two thousand twenty-four but prior to June thirtieth, two thousand twenty-four.

§ 8-022. Subdivision 1 of section 368-e of the social services law, as amended by section 55 of part B of chapter 58 of the laws of 2009, is amended to read as follows:

1. The department of health shall review claims for expenditures made by counties**, the city of Staten Island** and the city of New York for medical care, services and supplies which are furnished to preschool children with handicapping conditions or such preschool children suspected of having handicapping conditions, as such children are defined in the education law. If approved by the department, payment for such medical care, services and supplies which would otherwise qualify for reimbursement under this title and which are furnished in accordance with this title and the regulations of the department to such children, shall be made in accordance with the department's approved medical assistance fee schedules by payment to such county or [~~city~~] **cities** which furnished the care, services or supplies either directly or by contract. Notwithstanding any provisions of law, rule or regulation to the contrary, any clinic or diagnostic and treatment center licensed under article twenty-eight of the public health law, which as determined by the state education department, in conjunction with the department of health, has a less than arms length relationship with the provider approved under section forty-four hundred ten of the education law shall, subject to the approval of the department and based on standards developed by the department, be authorized to directly submit such claims for medical assistance, services or supplies so furnished for any period beginning on or after July first, nineteen hundred ninety-seven. The actual full cost of the individualized education program (IEP) related services incurred by the clinic shall be reported on the New York State Consolidated Fiscal Report in the education law section forty-four hundred ten program cost center in which the student is placed and the associated medical assistance revenue shall be reported in the same manner.

§ 8-023. Subdivision 13 of section 390 of the social services law, as amended by chapter 160 of the laws of 2003, is amended to read as follows:

13. Notwithstanding any other provision of law, this section[~~, except for paragraph (a-1) of subdivision two-a of this section,~~] shall not apply to child day care centers in the city of New York **or in the city of Staten Island**.

§ 9-001. Subdivision 1 of section 214 of the county law, as amended by chapter 967 of the laws of 1973, is amended to read as follows:

1. Concurrent resolutions, election notices and official canvass. The members of the county legislative body, whether such body be denominated board of supervisors, county legislature or otherwise, or, in the [~~city~~] **cities** of New York **and Staten Island**, of the council of **each** such city representing respectively each of the two principal political parties into which the people of the state are divided, shall designate annually the newspaper published within the county to publish the concurrent resolutions of the legislature. Such designation shall be in writing and signed by a majority of the members representing each of said political parties. In making such designation, consideration shall be given to the newspapers advocating the principles of such political party, the support of its nominees and the extent of the circulation in the county. However the fact that a newspaper is an independent newspaper not advocating the principles of any political party shall not disqualify it from consideration. If there be but one newspaper published in the county, such newspaper shall be designated. The designation shall be filed with the clerk of the county legislative body or, in the [~~city~~] **cities** of New York **and Staten Island**, with the clerk of the council of **each** such city, who shall not later than January tenth cause notice of the name and address of such newspaper or newspapers to be forwarded to the secretary of state. In like manner the members of the county legislative body or, in the [~~city~~] **cities** of New York **and Staten Island**, of the council of **each** such city representing each of the two principal political parties into which the people of the state are divided, shall designate the newspaper published within the county to publish the election notices issued by the secretary of state and the newspaper to publish the official canvass. In the event of a failure so to designate in any year, or if either of such political parties has no representatives among the body or, in the [~~city~~] **cities** of New York **and Staten Island**, council membership, the last newspaper designated by the members of such party shall be deemed duly designated.

§ 9-002. Section 226-a of the county law, as added by chapter 80 of the laws of 1969, is amended to read as follows:

§ 226-a. Patriotic observances. The county legislature and/or board of supervisors, as the case may be, of any county or borough outside the city of New York **or the city of Staten Island**, is hereby authorized to appropriate and set aside each year such sums it may deem proper for the purpose of providing for the due and proper observance of any legal holiday, including Columbus day.

§ 9-003. Section 361-a of the county law, as amended by chapter 359 of the laws of 1989, is amended to read as follows:

§ 361-a. Expenses of boards of elections outside New York City **and the city of Staten Island**; apportionment of. The board of elections in each county, outside of the [~~city~~] **cities** of New York **and Staten Island**, on or before the fifteenth day of December and not earlier than the first day of October, in each year, shall certify to the clerk of the legislative body of the county, the total amount of the expenses of such board

of elections, including salaries for the preceding year, and, if the legislative body of any county shall so direct, shall certify to such clerk the portions of such expenses which under provisions of law are to be borne by any city or cities in said county and the portion thereof which is to be borne by the rest of such county and such clerk shall thereupon notify the proper local official or officials, who, in spreading upon the assessment-rolls the taxes to be levied upon the taxable property in the city or any such cities, and in the rest of the county, shall include in the amount so spread the amounts certified by the board of elections to be borne by such city or cities, respectively, and in the amount spread upon the assessment-rolls of the taxable property in the several towns or other political subdivisions of the rest of the county the amount so certified by said board of elections to be borne by such towns or political subdivisions respectively. Whenever any additional expenses either for salaries or supplies in addition to the regular county-wide primary and election expenses are incurred by a board of elections incidental to any election in any city, town or village, such board of elections shall certify to the county legislative body a detailed statement of such expenses and said county legislative body may cause the amount thereof to be levied against such city, town or village or may certify the amount thereof to such city, town or village and such city, town or village shall upon such certification, include the amount so certified in the next budget and tax levy and shall pay the same to the county.

§ 9-004. Subdivision 2 of section 390 of the county law, as added by chapter 1 of the laws of 1951, is amended to read as follows:

2. Whenever a patient admitted to said hospital has local residence, as defined in the public health law, in the county in which the hospital is situated, he shall be a charge upon such county. If such patient admitted to said hospital has local residence in some other county or in the city of New York **or the city of Staten Island**, he shall be a charge upon such other county or the city of New York **or the city of Staten Island**, as the case may be, and the superintendent shall send a bill for such charge to the clerk of the board of supervisors of such other county or to the comptroller of the city of New York **or of the city of Staten Island**. Such charge shall be at a rate to be fixed by the board of managers, which shall not exceed the per diem per capita cost of care and treatment in said hospital, and if the county operating said hospital is currently receiving state aid for the care and treatment of tuberculosis patients pursuant to the public health law, such charge may be an amount for each day of such patient's care equivalent to the balance of the total per diem per capita cost of operating such hospital during the preceding fiscal year, as computed and approved by the state commissioner of health [~~**pursuant to subdivision three of section fifty-four of the public health law**~~]. Such bill shall be audited and paid by the board of supervisors of said county, except that a bill so submitted to the city of New York **or the city of Staten Island** shall be paid by such city after audit and upon warrant of the comptroller of such city. Any patient admitted to said hospital may pay for his care and treatment in whole or in part if he volunteers to do so.

§ 9-005. Section 391 of the county law, as added by chapter 1 of the laws of 1951, is amended to read as follows:

§ 391. Admission of out of county patients. 1. Exclusive of the city of New York **and the city of Staten Island**, and exclusive of counties served by state tuberculosis hospitals, any person in a county not having a county hospital for the care and treatment of persons suffering

from tuberculosis may apply in person to the clerk of the board of supervisors of such county or to the state commissioner of health for admission to a tuberculosis hospital, providing that such person submit with such application a statement signed by a reputable physician that such physician has, within the ten days preceding the date of such application, examined such person and that, in his opinion, such person is suffering from tuberculosis or is suspected of having tuberculosis and is in need of care and treatment therefor. Upon receipt of such application, the clerk of the board of supervisors or the state commissioner of health, as the case may be, shall forward the same to the superintendent of any state, county or city hospital for the care and treatment of tuberculosis.

2. Whenever the superintendent of such a hospital shall receive an application for the admission of a patient in accordance with the provisions of subdivision one of this section, if it appear from such application that the person therein referred to is suffering from tuberculosis or is suspected of having tuberculosis and is in need of care and treatment therefor, the superintendent shall notify said person to appear in person at the hospital, provided there be a vacancy in such hospital and there be no pending application from a patient living in the county in which the hospital is located. If, upon personal examination of the patient, the superintendent is satisfied that such patient is in need of care and treatment for tuberculosis, he shall admit him to the hospital. Every patient so admitted shall be a charge against the county in which he was living immediately prior to such admission. Such charge shall be at a rate to be fixed by the board of managers, which shall not exceed the per diem per capita cost of maintenance therein and any cost of transportation to or from the hospital, except that if the county operating said hospital is currently receiving state aid for the care and treatment of tuberculosis patients pursuant to the public health law, such charge shall be an amount for each day of such patient's care equivalent to the balance of the total per diem per capita cost of operating such hospital during the preceding fiscal year, as computed and approved by the state commissioner of health [~~**pursuant to subdivision three of section fifty-four of the public health law**~~]; and the bill therefor shall be audited and paid by the board of supervisors of the said county. However, if such patient has local residence, as defined in the public health law, in some county other than the one in which he was living immediately prior to such admission or in the city of New York **or the city of Staten Island**, he shall be a charge upon such other county or the city of New York **or the city of Staten Island**, as the case may be, and in this event any amounts for the cost of such care and treatment which shall have been paid by the county from which he was admitted shall be charged back and reimbursed to such county by the aforesaid other county or the city of New York **or the city of Staten Island** in which the patient has local residence. Any patient admitted to a hospital in accordance with the provisions of subdivision one of this section may pay for his care and treatment in whole or in part if he volunteers to do so.

§ 9-006. Section 901 of the county law is amended by adding a new subdivision 1-a to read as follows:

**1-a. The commissioner of corrections of the city of Staten Island shall have custody of the civil jails and persons lawfully committed to his or her custody and such jails shall be kept by him or her, or by keepers appointed by him or her, for whose acts he or she shall be responsible.**

§ 9-007. Subdivision 1 of section 902 of the county law, as amended by chapter 950 of the laws of 1956, is amended to read as follows:

1. The offices of the county clerk in the counties constituting the city of New York **and the office of the Richmond county clerk** shall remain open for the transaction of business from nine o'clock in the forenoon to four o'clock in the afternoon every day except Saturdays, Sundays and holidays and except in the months of July and August when said offices shall remain open for the transaction of business from nine o'clock in the forenoon to two o'clock in the afternoon except Saturdays, Sundays and holidays.

§ 9-008. Section 904 of the county law, as amended by chapter 655 of the laws of 1978, is amended to read as follows:

§ 904. Court and trust fund register and liability of officers. The county clerks of the counties comprising the city of New York **and the Richmond county clerk** shall perform the same duties and shall be subject to the same penalties imposed by the provisions of this chapter upon other county clerks of the state with relation to court and trust fund registers and the delivery of property or moneys to the commissioner of finance in pursuance of any judgment, decree or order of a court of record of this state.

§ 9-009. The county law is amended by adding a new section 905-a to read as follows:

**§ 905-a. Liability for loss of court and trust funds in the city of Staten Island. The officer responsible for collection and management of public funds for the city of Staten Island and such officer's surety or sureties shall be liable in the same manner as county treasurers are made liable under the provisions of this chapter for the loss of court and trust funds.**

§ 9-010. The county law is amended by adding a new section 906-a to read as follows:

**§ 906-a. Liability of city of Staten Island for loss of court and trust funds. The city of Staten Island shall be responsible for all property or moneys deposited with the officer responsible for collection and management of public funds for the city of Staten Island by virtue of any judgment, decree or order of a court of record in this state provided, however, that the city shall not be held liable for any loss due to the depreciated value of an investment legal at the time of its purchase and which continued to be a legal investment during the period of the trust. An action to recover any loss to or of such fund may be brought against the city by any party aggrieved or by the state comptroller in a court of competent jurisdiction.**

§ 9-011. The county law is amended by adding a new section 931-a to read as follows:

**§ 931-a. Employees of the district attorney of the county of Richmond. The district attorney of Richmond county is vested with the power to appoint any person to any position for which there is now provision by appropriation or which shall hereafter be established. All positions in the district attorney's office of Richmond county for which there is now provision by appropriation shall be continued, except that the mayor of the city of Staten Island may with the consent of the district attorney increase or decrease the number of positions and the term, grade, salary and compensation of any position.**

§ 9-012. The county law is amended by adding a new section 944 to read as follows:

**§ 944. Applicability of article to the county of Richmond. For the purposes of continuing the application of this article within the city**

of Staten Island on and after the date of establishment of the city of Staten Island, the county of Richmond shall be deemed to continue as a county within the city of New York for the purposes of exercising those powers and duties devolved upon said county of Richmond pursuant to this article.

§ 9-013. Subdivision 2 and paragraphs (a) and (c) of subdivision 3 of section 9-124 of the election law, subdivision 2 as amended by chapter 437 of the laws of 2019, paragraphs (a) and (c) of subdivision 3 as amended by chapter 481 of the laws of 2023, are amended to read as follows:

2. Each box, envelope, or container containing the ballots and stubs, if any, and all items described in subdivision one of this section shall be deposited by an inspector designated for that purpose with the officer or board from whom or which the board of inspectors received it. In the city of New York and the city of Staten Island, every such box, envelope, or container shall be delivered at the polling place to police or peace officers designated by the police commissioner of such [~~city~~] cities, who shall deposit them with the appropriate board of elections.

(a) Except in the city of New York or the city of Staten Island, the registration poll records or computer generated registration lists, the returns of canvass with results tapes and tally sheets, if any, annexed, the voted ballots, stubs, opened packages of unused ballots and ballot envelopes, any early mail, absentee, military, special federal, or special presidential ballots which may have been delivered to the poll site during election day, the challenge report records, keys and the package of protested and void ballots shall be filed with the appropriate board of elections.

(c) In the city of New York and the city of Staten Island, the board of inspectors shall deliver to police or peace officers designated by the police commissioner of such [~~city~~] cities, at the polling place the registration poll records or computer generated registration lists, challenge report, records, keys, other election supplies, including two copies of the returns of the canvass and any early mail, absentee, military, special federal, or special presidential ballots which may have been delivered to the poll site during election day, voted ballots, stubs, open packages of unused ballots and ballot envelopes. Such police or peace officers shall file the returns, the package of void and protested ballots, if any, and the early mail, absentee, military, special federal, or special presidential ballots which may have been delivered to the poll site during election day; and emergency ballots, stubs and ballot envelopes, if any, within twenty-four hours after the close of the polls, in the office of the appropriate board of elections or its branch office within the borough, as the case may be.

§ 9-014. Subdivision 3 of section 9-124 of the election law is amended by adding a new paragraph (d) to read as follows:

(d) In the city of Staten Island the board of inspectors, shall deliver to the police or peace officer at the polling place the registration poll records or computer generated registration lists, challenge report, records, keys, the flag, other election supplies, the returns of the canvass and the absentee and military, special federal, special presidential and emergency ballots, stubs and ballot envelopes. The police or peace officer shall file the returns, the package of void, protested and wholly blank ballots, if any, and the absentee and military, special federal, special presidential and emergency ballots, stubs and ballot envelopes, if any, within twenty-four hours after the close of the polls, in the office of the board of elections.

§ 9-015. Section 88-b of the state finance law, as added by chapter 13 of the laws of 1987, subdivisions 2 and 6 as amended by chapter 65 of the laws of 1988, is amended to read as follows:

§ 88-b. Suburban transportation fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller a fund to be known as the "suburban transportation fund".

2. The suburban transportation fund shall consist of moneys from the commuter railroad account of the metropolitan transportation authority special assistance fund required to be paid by such authority to the suburban transportation fund pursuant to subdivision three of section twelve hundred seventy-a of the public authorities law and any moneys from the metropolitan transportation authority Dutchess, Orange and Rockland fund transferred pursuant to subdivision four of section twelve hundred seventy-a of the public authorities law.

3. Moneys in the suburban transportation fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance and the comptroller. All deposits of such money shall, if required by the comptroller, be secured by obligations of the United States or of the state of market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such securities for such deposits.

4. Moneys of the fund shall be made available for financing any of the following types of capital projects within the counties comprising the metropolitan commuter transportation district, except those counties comprising the city of New York **or the city of Staten Island**, but only to the extent that such projects are on an adopted transportation plan and approved by a designated transportation coordinating committee, if one exists, or by the metropolitan planning organization as created pursuant to section fifteen-a of the transportation law if no designated transportation coordinating committee exists: capacity and infrastructure improvements to state, county, town, city, village roads, highways, parkways and bridges; or state, county, town, city or village mass transportation projects; provided, however, that in Nassau and Suffolk counties such moneys shall be available only for capacity improvements to state roads, highways, parkways and bridges. The amount of state funds historically appropriated statewide, other than bond funds, for transportation capital purposes from other sources shall not be reduced because of the availability of such moneys made available pursuant to this chapter, nor shall such moneys be used to match federal aid. Prior to the allocation of state advance funds appropriated pursuant to this section, the municipality responsible for the project shall certify to the commissioner of transportation that the amount of funds appropriated for transportation capital purposes by that municipality shall not be reduced because of the availability of such state advance funds, and that such moneys shall not be used to match federal aid.

The designated transportation coordinating committee, if one exists, or the metropolitan planning organization if no designated transportation coordinating committee exists, shall notify the municipalities within its jurisdiction of which projects it has approved.

5. In the event that any county withdraws from the metropolitan commuter transportation district, the withdrawing county shall pay to the state comptroller any amount that is required so that the state is fully reimbursed for funds advanced in anticipation of reimbursement from the suburban transportation fund. In the event that any withdrawing county shall fail to make a payment pursuant to this subdivision, the state comptroller shall withhold and pay to the capital projects fund an

amount equal to the amount owed from the next general or specific state aid payment and scheduled to be paid to that county.

6. Moneys in the suburban transportation fund transferred pursuant to section twelve hundred seventy-a of the public authorities law shall be made available to the state department of transportation for capital projects in the counties of Nassau, Suffolk, Westchester, Putnam, Dutchess, Orange and Rockland on the basis of each county's average pro rata share of the mortgage recording tax receipts raised in such counties pursuant to subdivision one of section two hundred sixty-one of the tax law during the period January first, nineteen hundred eighty-four through December thirty-first, nineteen hundred eighty-six as certified by the metropolitan transportation authority. Moneys transferred to the suburban transportation fund at the request of Dutchess, Orange or Rockland county pursuant to subdivision three of section twelve hundred seventy-b of the public authorities law shall be used by the state department of transportation to increase the proportionate share of such capital projects in such county. Such projects shall be financed by means of a state advance to be reimbursed by the New York state thruway authority, or its successor agency, through the issuance of its bonds or notes in the manner set forth in subdivision seven of this section, or by means of a state advance to be reimbursed directly from the suburban transportation fund.

7. (a) For projects funded by the suburban transportation fund, the state department of transportation may enter into an agreement with the New York state thruway authority, or its successor agency, for the purpose of having the thruway authority, or its successor agency, issue bonds or notes to pay the capital costs of such project. Such agreement shall be subject to approval by the director of the division of the budget.

(b) For projects funded pursuant to this subdivision, the affected municipality shall enter into an agreement with the department of transportation for the conveyance of all affected real property including highways, roads and bridges to the thruway authority, or its successor agency, for the term of the bonds or notes issued by the thruway authority, or its successor agency, for such project or for such lesser period that such bonds or notes are outstanding. During the period of such conveyance to the thruway authority, or its successor agency, the department of transportation or the municipality shall agree to maintain the facility in a state of good repair, the responsibility for which shall be with the state, or municipality, which had jurisdiction over said facility prior to such agreement.

(c) Upon the final retirement of all bonds and notes issued by the thruway authority, or its successor agency, for such purpose, such property shall automatically revert to the conveying entity.

8. Payments to the thruway authority, or its successor agency, pursuant to this section shall be subject to appropriation from the suburban transportation fund. The thruway authority, or its successor agency, shall utilize such moneys to pay the debt service on such bonds or notes and to meet administrative costs in connection therewith.

§ 9-016. Section 2302 of the surrogate's court procedure act, as amended by chapter 460 of the laws of 1999, is amended to read as follows:

§ 2302. Award of costs and allowances

1. Upon a motion the court may award costs to any party in such amount as it determines not exceeding $20 to each party, except in coun-

ties within the City of New York **and in the city of Staten Island**, where such amount shall not exceed $40.

2. Upon rendering a decree or in granting or denying an application to vacate a decree the court may award as costs such sum as it deems reasonable to the petitioner and to any other party who has succeeded in whole or in part in a contest or whose attorney, in the absence of a contest, has rendered services of substantial benefit to him, her or it, or to the estate, not exceeding

(a) in counties within the City of New York **and in the city of Staten Island**:

(i) $100 where there has not been a contest, or

(ii) $300 where there has been a contest and $300 for each day, less one, necessarily occupied in the trial or hearing and in addition $100 for each day necessarily occupied in preparing therefore and $100 additional if a motion for a new trial is granted.

(b) in all other counties:

(i) $50 where there has not been a contest, or

(ii) $150 where there has been a contest and $150 for each day, less one, necessarily occupied in the trial or hearing and in addition $50 for each day necessarily occupied in preparing therefore and $50 additional if a motion for a new trial is granted.

3. In a contested probate proceeding:

(a) Costs payable out of the estate or otherwise may be awarded (1) to an unsuccessful contestant only if he, she or it be a guardian ad litem or guardian, committee or conservator of a person under disability; (2) to an unsuccessful proponent named as executor in the will when propounded by him, her or it in good faith as the last will of the decedent; and (3) to a person named as executor in a prior will on file in the court that is not admitted to probate when such person participates in the proceeding in good faith. Such nominated executor, guardian ad litem, guardian, committee or conservator, whether successful or not may be awarded costs and an allowance in such sum as the court deems reasonable for his, her or its counsel fees and other expenses incurred in the contest or attempt to sustain the will. The court may direct that such costs and allowances in whole or in part be payable by an unsuccessful contestant except that an award of the successful proponent's counsel's fees may only be allowed where the court finds that the contest was brought in bad faith or was frivolous.

(b) Either before or after the decree granting probate the court may order that a copy of the minutes of the trial be furnished to a contestant for the purposes of appeal and charge the expense thereof initially to the estate if satisfied that the contest is in good faith. If the contestant be unsuccessful upon the appeal and he, she or it is not the guardian of an infant, the committee of an incompetent, the conservator of a conservatee or a guardian ad litem he, she or it shall refund to the estate any amount so paid by the estate for the minutes.

4. In a proceeding for probate of a will when the public administrator or county treasurer has been directed to probate a will or continue the proceedings for the probate thereof, the court may award to either of them such sum as it deems reasonable for his, her or its counsel fees and other expenses necessarily incurred therein.

5. After appeal, pursuant to the direction of the appellate court the court may award a fiduciary such sum as it deems reasonable for counsel fees and other expenses necessarily incurred on the appeal.

6. In a proceeding to construe a will or after appeal in such a proceeding, pursuant to the direction of the appellate court the court

may award to a fiduciary or any party to the proceeding such sum as it deems reasonable for his, her or its counsel fees and other expenses necessarily incurred in the proceeding or on the appeal.

7. Upon a final or intermediate judicial settlement a fiduciary may be awarded for his, her or its expenses and counsel fees such sum as the court deems reasonable not exceeding:

(a) within the counties of the City of New York **and in the city of Staten Island**: $100 for each day necessarily occupied in preparing the account and in drawing, entering and executing the decree. Any sum so awarded may be in addition to any costs, allowances or commissions otherwise authorized and awarded by the court.

(b) in all other counties: $ 50 for each day necessarily occupied in preparing the account and in drawing, entering and executing the decree. Any sum so awarded may be in addition to any costs, allowances or commissions otherwise authorized and awarded by the court.

8. In a proceeding for disposition of real property a fiduciary may be awarded out of the proceeds of sale his, her or its commissions and such sum as the court deems reasonable for counsel fees and expenses necessarily incurred in the proceeding.

§ 9-017. The general municipal law is amended by adding a new section 929 to read as follows:

**§ 929. City of Staten Island industrial development agency. (a) Legislative intent. It is the policy and intent of the city of Staten Island to promote the economic welfare of its inhabitants and to actively promote, attract, encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of a city of Staten Island industrial development agency. It is recognized that the viability and integrity of the residential communities in the city of Staten Island should be protected and maintained so that no person be deprived of his or her place of residence by any condemnation for economic or industrial development undertaken pursuant to this article.**

**(b) For the purpose of this section "city" means the city of Staten Island.**

**(c) For the benefit of the city and the inhabitants thereof an industrial development agency, to be known as the city of Staten Island industrial development agency, is hereby established for the accomplishment of any or all of the purposes specified in title one of this article, except that it shall not have the power to construct or rehabilitate any residential facility or housing of any nature and kind whatsoever, nor shall it use any of its funds to further the construction or rehabilitation of any residential facility or housing of any nature and kind whatsoever. It shall constitute a body corporate and politic, and be perpetual in duration. It shall only have the powers and duties conferred by title one of this article upon industrial development agencies as of January first, nineteen hundred seventy-three except it shall not have the power of condemnation. In the exercise of the powers conferred upon such agency with respect to the acquisition of real property by this article such agency shall be limited to the geographical jurisdictional limits of the city.**

**(d) It shall be organized in a manner prescribed by and be subject to the provisions of title one of this article, except that its board shall consist of ten members. Among its membership shall be the city comptroller, the city commissioner of economic development, the corporation counsel of such city and the director of the city planning commission of such city, each of whom shall have the power to designate an alternate**

to represent them at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation be in writing to the chairperson of the board. The remaining six members shall be appointed by the mayor of such city.

(e) The mayor shall designate the chairperson of the board, who shall serve at the pleasure of the mayor.

(f) The terms of the directors first appointed by the mayor, other than the chairperson of the board shall be as follows:

(1) two shall serve for terms of one year each;

(2) two shall serve for terms of two years each;

(3) two shall serve for terms of three years each, thereafter the successors of all such directors shall serve for terms of three years each. The mayor shall fill any vacancy which may occur by reason of death, resignation, or otherwise in a manner consistent with the original appointment. Members may be removed by the mayor for cause after a hearing upon ten days' written notice. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

(g) The chief executive officer of the agency shall be appointed by a two-thirds vote of the board of directors.

(h) The agency, its members, officers, and employees, shall be subject to article fourteen of the civil service law and for all such purposes the agency shall be deemed the "public employer" and its members, officers and employees shall be deemed "public employees".

(i) The city shall have the power to make, or contract to make grants or loans including, but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.

(j) The city shall have the power to condemn property for transfer to the city of Staten Island industrial development agency under title one of this article upon the request of two-thirds of the members of the board of directors of the city of Staten Island industrial development agency. No property shall be condemned on behalf of the agency which is zoned "residential" as defined in the zoning resolution of the city, if any, or which is occupied in whole or in part as a dwelling or residence.

(k) For the purpose of this section "governing body" as used in title one of this article shall mean the mayor of the city. Except as otherwise provided in this section, the agency, its members, officers and employees, and its operations and activities shall be governed by the provisions of title one of this article.

(l) The city shall save harmless and indemnify any person who is serving or has served as a director or officer or as employee of the city of Staten Island industrial development agency against any financial loss arising out of or in connection with any claim, demand, suit or judgment, based on a cause of action involving allegations that pecuniary harm was sustained by any person as a result of any transaction, act or omission to act of the city of Staten Island industrial development agency or of any action or inaction or vote of any director, officer or employee of such agency unless such individual is found by a final judicial determination not to have acted in good faith for a purpose such individual reasonably believed to be in the best interests of the agency or not to have had reasonable cause to believe that such

conduct was lawful. Provided, however, that such individual must transmit to the corporation counsel of the city of Staten Island any notice of claim, summons or complaint or other analogous paper served on such individual within ten days of its receipt unless prevented from doing so by compelling circumstances. The corporation counsel shall, without charge, represent any such individual unless unable to do so by reason of conflict of interest. In the event that the corporation counsel is unable to give such representation, the city of Staten Island shall indemnify the individual for any reasonable litigation expense incurred by such individual.

§ 10-001. Legislative findings. It is the intention of the legislature that the incorporation of the city of Staten Island shall not alter the existing landlord-tenant relationships within such city and that the state and local laws regulating landlord-tenant relationships such as legal regulated rents, maximum rents and tenancy issues shall continue to provide such regulation until superseded by state law or local law of the city of Staten Island and in accordance with such intent, such laws and regulations are hereby continued. It is further provided that all real property tax exemptions provided under article 4 of the real property tax law shall be continued as shall all rent regulations and other regulations and duties imposed on the owners of property receiving exemptions pursuant to such article until superseded by state law or local law of the city of Staten Island.

§ 10-002. Section 1 of chapter 21 of the laws of 1962, constituting the local emergency housing rent control act, is amended by adding a new subdivision 2-a to read as follows:

2-a. Applicability. For the purposes of this act, a city which is incorporated on or after the first of January next succeeding the date on which this subdivision shall have become a law and which is comprised of a geographical area with respect to which provisions of this act were in effect on the date immediately prior to such incorporation and which city had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.

§ 10-003. Section 4 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding a new subdivision f to read as follows:

f. In the city of Staten Island, the rent guidelines board shall be the rent guidelines board established pursuant to the local law enacted as a successor to the New York city rent stabilization law of nineteen hundred sixty-nine and provided with such powers under such local law.

§ 10-004. Subdivision b of section 14 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is relettered subdivision c and a new subdivision b is added to read as follows:

b. in the city of Staten Island; provided that for the purposes of this act, the city of Staten Island shall continue to be treated as a city with a population of one million or more and the reference to any local law applicable to the geographical area of such city prior to its incorporation shall refer to the appropriate successor legislation enacted by the city of Staten Island; and

§ 10-005. The section heading and subdivision 8 of section 352-eeee of the general business law, as amended by section 1 of part N of chapter 36 of the laws of 2019, are amended to read as follows:

Conversions to cooperative or condominium ownership in the city of New York or in the city of Staten Island.

8. The provisions of this section shall only be applicable in the city of New York **and the city of Staten Island**.

§ 10-006. Section 467-b of the real property tax law is amended by adding a new subdivision 14 to read as follows:

**14. For the purposes of this section, the city of Staten Island shall continue to be treated as a city with a population of one million or more and any reference to a local law enacted pursuant to the local emergency housing rent control act shall also refer to the successor local law enacted by the city of Staten Island.**

§ 10-007. The real property tax law is amended by adding a new section 498 to read as follows:

**§ 498. City of Staten Island. For the purposes of this article, the city of Staten Island shall continue to be treated as a city with a population of one million or more and the reference to any local law applicable to the geographical area of such city prior to its incorporation shall be deemed to refer to the appropriate successor legislation enacted by the city of Staten Island.**

§ 10-008. Applicability. It is the intention of the legislature that the state and local laws regulating landlord-tenant relationships such as legal regulated rents, maximum rents and tenancy issues shall continue to provide such regulation; provided, however, that within one hundred twenty days after the date of establishment of the city of Staten Island, the common council of such city must make a determination of whether or not a public emergency exists requiring the continuation of such regulations.

§ 11-001. Legislative findings. The legislature recognizes that the formation of the city of Staten Island was not contemplated in the establishment of the constitutional real property tax limitations. To the greatest extent practicable, the establishment of the city of Staten Island is formulated to preserve existing local laws, regulations and instrumentalities of government to preserve the status quo and prevent a disruption of government injurious to the public good.

The unique factor which determined the establishment of the constitutional real property tax limits for the city of New York was the inclusion of counties wholly within the city with the city assuming the responsibilities and expenditures for functions normally exercised by the counties in areas outside the city of New York. Staten Island will now share this unique factor with New York city, as the county of Richmond is wholly contained within the city of Staten Island.

Real property located in cities outside the city of New York is subject to a real property tax limit of four percent, of which two percent is city tax and two percent is county tax. Real property located within New York city is subject to a more restrictive real property tax limit of two and one-half percent, all of which is city tax. County real property tax is not permitted within the city of New York.

The people of the city of Staten Island and county of Richmond and the New York state legislature have adopted a charter for the city of Staten Island which continues the New York city form of government placing governmental responsibility on the city rather than the county. The county of Richmond has not assumed new responsibilities justifying an interpretation of the constitutional real property tax limits which would permit the county of Richmond to impose a real property tax. Likewise the maintenance of the New York city form of government with the usual county responsibilities being a function of city government when combined with the prohibition of a county real property tax, requires an

interpretation providing a city real property tax limit of two and one-half percent for the city of Staten Island.

Therefore the legislature finds and declares that the existing more restrictive real property tax limits for real property located within the county of Richmond remain in effect, providing a city real property tax limit of two and one-half percent for the city of Staten Island and prohibiting the imposition of a real property tax by the county of Richmond.

§ 12-001. Subdivision (a) of section 1107 of the tax law, as amended by section 1 of part C of chapter 407 of the laws of 1999, is amended to read as follows:

(a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city **(including, in the case of the municipal assistance corporation for the city of New York, the city of Staten Island)**, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

§ 12-002. Subdivision (c) of section 1107 of the tax law, as amended by chapter 588 of the laws of 2000, is amended to read as follows:

(c) Tax on sale of service of parking, garaging or storing of motor vehicles. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five, eleven hundred ten and subdivision (a) of this section, there is hereby imposed on such date, within the territorial limits of such city **(including, in the case of the municipal assistance corporation for the city of New York, the city of Staten Island)**, and there shall be paid, additional taxes at the rate of six 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 of motor vehicles provided, however, that this subdivision shall not apply to such facilities owned and operated by such city or an agency or instrumentality of such city or a public corporation the majority of whose members are appointed by the chief executive officer of such city or the legislative body of such city or both of them; 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 subdivision. For purposes of this subdivision, 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 condomin-

ium, 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. All provisions set forth in this article applicable to the taxes imposed under section eleven hundred five, including the definition and exemption provisions of this article, shall apply with respect to a tax imposed under this subdivision, except as to rate and except as otherwise provided herein. The transitional provisions contained in section eleven hundred six shall not apply to the taxes imposed by this section.

§ 12-003. Intentionally omitted.

§ 12-004. Section 1210 of the tax law is amended by adding two new subdivisions (k) and (l) to read as follows:

**(k) In the case of the municipal assistance corporation for the city of New York the power of the city of Staten Island to adopt and amend local laws, ordinances or resolutions imposing taxes pursuant to the authority of such section shall, notwithstanding any provisions of article twenty-nine of this chapter to the contrary, be suspended until all the notes and bonds of such municipal assistance corporation shall have been fully paid and discharged together with interest on unpaid installments of interest.**

**(l) Notwithstanding the provisions of subdivision (k) of this section, the city of Staten Island is hereby authorized and empowered to adopt and amend local laws, imposing taxes, at a rate not to exceed two percent on the receipts of sales from the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining, and charges to a patron for admission to, or use of, facilities for sporting activities in which the patron is to be a participant such as bowling alleys and swimming pools. Such taxes shall be administered, collected and distributed by the state tax commission as provided in subpart B of part three and in part four of this article.**

§ 12-005. Subdivisions 3 and 4 of section 92-d of the state finance law, subdivision 3 as amended by section 4 of part A of chapter 88 of the laws of 2000 and subdivision 4 as amended by section 11 of part SS1 of chapter 57 of the laws of 2008, are amended to read as follows:

3. The taxes, interest and penalties imposed, pursuant to sections eleven hundred seven or eleven hundred eight (as the case may be) of the tax law within the territorial limits of a city in aid of which a municipal assistance corporation has been created **(including, in the case of the municipal assistance corporation for the city of New York, the city of Staten Island)**, and received by the commissioner of taxation and finance, after deducting the amount which the commissioner of taxation and finance shall determine to be necessary for reasonable costs of the commissioner of taxation and finance in administering, collecting and distributing such taxes, shall be appropriated (i) to the municipal assistance corporation which has been created in aid of such city in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, and (ii) the balance, if any, to the city in aid of which such corporation has been created, or to a public benefit corporation to which the tax may be otherwise payable pursuant to law, as hereinafter provided. **Notwithstanding the provisions of this subdivision, in the case of the municipal assistance corporation for the city of New York, such balance,**

**if any, shall be divided between the city of New York and the city of Staten Island and paid, as hereinafter provided.**

4. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the comptroller the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed and in addition on or before the last day of June the commissioner shall certify the amount of such revenues received during and including the first twenty-five days of June. **In the case of the municipal assistance corporation for the city of New York, the commissioner of taxation and finance shall certify separately the amounts of such revenues received from within the territorial limits of the city of New York and the territorial limits of the city of Staten Island.** The amount of revenues so certified shall be deposited by the comptroller in the municipal assistance tax fund and the amount attributable to the taxes, interest and penalties imposed within the territorial limits of a city in aid of which a municipal assistance corporation has been created **including, in the case of the municipal assistance corporation for the city of New York, the city of Staten Island** shall be credited to a special account established in such fund for such corporation. Notwithstanding the foregoing provisions, the commissioner of taxation and finance may prorate revenue attributable to the first or last quarterly return period during which the taxes imposed by section eleven hundred seven or eleven hundred eight (as the case may be) of the tax law apply so as to separate from the revenue collected for that quarter pursuant to such taxes the revenue collected pursuant to local legislation adopted by a city pursuant to section twelve hundred ten or twelve hundred twelve-A of the tax law. Such a proration by the commissioner of taxation and finance shall be made on the basis of the ratio of the number of months during which such taxes were imposed during such quarterly return period to the total number of months in such quarterly return period when such proration is reasonably necessary to ascertain the amount of such money which must be deposited by the comptroller in such special account and the amount of such money which must be deposited pursuant to section twelve hundred sixty-one of the tax law. The commissioner of taxation and finance shall not be held liable for any inaccuracy in any certification under this subdivision.

§ 12-006. Subdivision 6 of section 92-d of the state finance law, as amended by section 4 of part A of chapter 88 of the laws of 2000, is amended to read as follows:

6. Upon receipt by the comptroller of a certificate or certificates from the [~~chairman~~] **chairperson** of a municipal assistance corporation that such corporation requires a payment or payments in order to comply with any agreement with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, from the special account established for such corporation, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comptroller shall pay from such special account on or before the specified date or within thirty days after such receipt, whichever is later, to such corporation, as the [~~chairman~~] **chairperson** thereof may direct in any such certificate, the amount or amounts so certified. **In the case of the municipal assistance corporation for the city of New York, each amount so paid shall be comprised of revenues attributable to receipts from both the city of New York and the city of Staten Island in the same proportion that such revenues were received during the period covered by each such certification.** The [~~chairman~~] **chairperson** of such corporation

shall furnish the commissioner of taxation and finance with copies of such certificates. The comptroller shall from time to time, but in no event later than the fifteenth day of October, January and April and the last day of June of each fiscal year, pay over and distribute to the chief fiscal officer of the city in aid of which such municipal assistance corporation has been created to be paid into the treasury of such city to the credit of the general fund, or pay over and distribute to a public benefit corporation to which the tax may otherwise be payable pursuant to law, all revenues in the special account established for such corporation in the municipal assistance tax fund, if any, in excess of the aggregate amount which the [~~chairman~~] **chairperson** of such corporation has certified to the comptroller and which has been previously appropriated and paid to such corporation as hereinabove authorized. **Notwithstanding the provisions of this subdivision, in the case of the municipal assistance corporation for the city of New York, the comptroller shall from time to time, but in no event later than the fifteenth of October, January, and April and the last day of June of each fiscal year, (a) apportion between the city of New York and the city of Staten Island the revenues, if any, in the special account established for such corporation in the municipal assistance tax fund on the basis of the locus of their receipt and (b) pay over and distribute to the chief fiscal officers of such cities to pay into their respective treasuries to the credit of the general fund all such respective revenues in excess of the aggregate amount which the chairperson of such corporation has certified to the comptroller and which has been previously appropriated and paid to such corporation as hereinabove authorized.** In no event shall the comptroller pay over and distribute any revenues (other than the amount to be deducted for administering, collecting and distributing such sales and compensating use taxes) to any person other than the municipal assistance corporation unless and until the aggregate of all payments certified to the comptroller as required by such corporation as of such date in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund, which remain unappropriated or unpaid to such corporation shall have been appropriated to such corporation and shall have been paid in full; provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such revenues and such agreement shall be executory only to the extent of such revenues available to the state in such special account. On the day on which the comptroller pays over and distributes to the chief fiscal officer of such city **or cities** any revenues from such special account the commissioner of taxation and finance shall certify to the comptroller the amount to be deducted for administering, collecting and distributing the tax imposed pursuant to section eleven hundred seven or eleven hundred eight (as the case may be) of the tax law within the territorial limits of such city **or cities** since he **or she** last certified such amount and the comptroller shall pay such amount into the general fund of the state treasury to the credit of the state purposes fund therein.

§ 12-007. Subdivision 3 of section 92-e of the state finance law, as amended by chapter 187 of the laws of 1995, is amended to read as follows:

3. Such amounts, including per capita aid apportioned to a city in aid of which a municipal assistance corporation has been created **(including, in the case of the municipal assistance corporation for the city of New York, the city of Staten Island)**, shall be deposited by the comptroller

to the credit of the special account established for the municipal assistance corporation which has been created in aid of such city in order to enable such corporation to fulfill the terms of any agreements made with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds and notes, and, subject to the provisions of section fifty-four of this chapter, and subdivisions five and five-a of this section, the balance, if any, shall be paid to the chief fiscal officer of the city in aid of which such corporation has been created as hereinafter provided. **Notwithstanding the provisions of this subdivision, in the case of the municipal assistance corporation for the city of New York, such balance, if any, shall be divided between the city of New York and the city of Staten Island and paid, as hereinafter provided.**

§ 12-008. Subdivision 5 of section 92-e of the state finance law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

5. Upon receipt by the comptroller of a certificate or certificates from the [~~chairman~~] **chairperson** of a municipal assistance corporation that such corporation requires a payment or payments in order to comply with any agreement with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds, from the appropriate special account established for such corporation, each of which certificates shall specify the required payment or payments and the date when the payment or payments is required, the comptroller shall pay from such special account on or before the specified date or within thirty days after receipt of such certificate or certificates, whichever is later, to such corporation, as the [~~chairman~~] **chairperson** thereof may direct in any such certificate, the amount or amounts so certified. **In the case of the municipal assistance corporation for the city of New York, each amount so paid shall be comprised of per capita aid apportioned to the city of New York and the city of Staten Island in the same proportion that such amounts were so apportioned during the period covered by each such certification.** The comptroller shall from time to time, but in no event later than the fifteenth day of October, January and April and the last day of June of each fiscal year, pay over and distribute to the chief fiscal officer of the city in aid of which such municipal assistance corporation has been created to be paid into the treasury of such city to the credit of the general fund all revenues in the special account established for such corporation in the municipal assistance state aid fund, if any, in excess of (i) the aggregate amount which the [~~chairman~~] **chairperson** of such corporation has certified to the comptroller and which has been previously paid to such corporation as herein above authorized, and (ii) amounts to be refunded to the general fund of the state of New York pursuant to subdivision five-a of this section. **Notwithstanding the provisions of this subdivision, in the case of the municipal assistance corporation for the city of New York, the comptroller shall from time to time, but in no event later than the fifteenth of October, January and April and the last day of June of each fiscal year, (a) apportion between the city of New York and the city of Staten Island the revenues, if any, in the special account established for such corporation in the municipal assistance state aid fund on the basis of the amounts apportioned to each such city pursuant to section fifty-four of this chapter and (b) pay over and distribute to the chief fiscal officers of such cities to be paid into their respective treasuries to the credit of the general fund all such respective revenues in**

**excess of the aggregate amount which the chairperson of such corporation has certified to the comptroller and which has been previously paid to such corporation as hereinabove authorized.** In no event shall the comptroller pay over and distribute any revenues to any person other than the municipal assistance corporation unless and until the aggregate of all payments certified to the comptroller as required by such corporation as of such date in order to comply with its agreements with the holders of its notes and bonds and to carry out its corporate purposes, including the maintenance of the capital reserve fund securing such bonds, which remain unpaid to such corporation shall have been paid in full to such corporation; provided, however, that no person, including such corporation or the holders of its notes or bonds shall have any lien on such revenues and such agreement shall be executory only to the extent of such revenues available to the state in such special account.

§ 12-009. Paragraph c of subdivision 6 of section 54 of the state finance law, as added by chapter 430 of the laws of 1997, is amended to read as follows:

c. Upon such certification of the amounts payable to counties, cities, villages and towns for town-wide and town outside village purposes, such per capita aid shall be apportioned and paid to the chief fiscal officer of each such locality pursuant to this section on audit and warrant of the state comptroller out of moneys appropriated by the legislature for such purpose to the credit of the local assistance account in the general fund of the state treasury; provided however that upon such certification of amounts payable to the city of New York **or, the city of Staten Island, if applicable**, such per capita aid shall be apportioned and paid as follows: (i) any amounts required to be paid to the city university construction fund pursuant to the city university construction fund act, (ii) any amounts required to be paid to the New York city housing development corporation pursuant to the New York city housing development corporation act, (iii) any amounts required to be paid by the city to the New York city transit authority pursuant to the provisions of chapter seven of the laws of nineteen hundred seventy-two, (iv) any amounts required to be paid by the city to the state to repay an advance made in nineteen hundred seventy-four to subsidize the fare of the New York city transit authority, (v) five hundred thousand dollars to the chief fiscal officer of the city of New York for payment to the trustees of the police pension fund of such city pursuant to the provisions of paragraph e of this subdivision, (vi) eighty million dollars to the special account for the municipal assistance corporation for the city of New York in the municipal assistance tax fund created pursuant to section ninety-two-d of this chapter to the extent that such amount has been included by the municipal assistance corporation for the city of New York in any computation for the issuance of bonds on a parity with outstanding bonds pursuant to a contract with the holders of such bonds prior to the issuance of any other bonds secured by payments from the municipal assistance state aid fund created pursuant to section ninety-two-e of this chapter, (vii) the balance to the special account for the municipal assistance corporation for the city of New York in the municipal assistance state aid fund created pursuant to section ninety-two-e of this chapter, and (viii) any amounts to be refunded to the general fund of the state of New York pursuant to the annual appropriation enacted for the municipal assistance state aid fund. Notwithstanding any existing law, no payments of per capita aid payable to the city of New York shall be paid to the state of New York municipal bond bank agency, the New York state sports authority or the transit construction

fund so long as amounts of such aid are required to be paid into the municipal assistance state aid fund, and thereafter, after payment of the amounts described in subparagraphs (i) through (viii) of this paragraph the balance shall be paid (A) to the state in repayment of the appropriation of two hundred fifty million dollars made to the city pursuant to chapter two hundred fifty-seven of the laws of nineteen hundred seventy-five providing emergency financial assistance to the city of New York at the extraordinary session held in such year, as amended, (B) to the state of New York municipal bond bank agency to the extent provided by section twenty-four hundred thirty-six of the public authorities law, (C) to the New York state sports authority to the extent provided by section twenty-four hundred sixty-three of the public authorities law, (D) to the transit construction fund to the extent provided by section twelve hundred twenty-five-i of the public authorities law, and thereafter (E) to the city **of New York**.

§ 12-010. Subparagraphs 1 and 2 of paragraph d of subdivision 6 of section 54 of the state finance law, as added by chapter 430 of the laws of 1997, are amended to read as follows:

(1) to the city of New York **and the city of Staten Island**, on the twenty-fifth days of April, June, October and February;

(2) to every county, city, village or town, other than the city of New York **and the city of Staten Island**, whose fiscal year commences on the first day of June or July, on the twenty-fifth days of April, May, September and December;

§ 12-011. Subdivisions 1 and 2 of section 3034 of the public authorities law, as added by chapter 169 of the laws of 1975, are amended to read as follows:

1. The corporation shall be administered by a board of directors, consisting of nine directors, none of whom shall be officers or employees of the federal government or of the state or political subdivisions thereof. All of the directors shall be appointed by the governor with the advice and consent of the senate, provided that four of such directors shall be appointed upon written recommendation of the mayor. Of the directors initially appointed upon the written recommendation of the mayor, one shall serve for a term ending December thirty-first, nineteen hundred seventy-six; one shall serve for a term ending December thirty-first, nineteen hundred seventy-seven; one shall serve for a term ending December thirty-first, nineteen hundred seventy-eight; and one shall serve for a term ending December thirty-first, nineteen hundred seventy-nine. **The provisions of this subdivision notwithstanding, of the directors appointed upon the recommendation of the mayor, the director whose term expires on the December thirty-first next preceding the establishment of a city of Staten Island, and any successor thereto, shall be appointed only upon the written recommendation of the mayor of the city of Staten Island.** Of the remaining directors initially appointed by the governor, one shall serve for a term ending December thirty-first, nineteen hundred seventy-six; one shall serve for a term ending December thirty-first, nineteen hundred seventy-seven; one shall serve for a term ending December thirty-first, nineteen hundred seventy-eight; and two shall serve for a term ending December thirty-first, nineteen hundred seventy-nine. Each director shall hold office until his **or her** successor has been appointed and qualified. Thereafter each director appointed by the governor shall serve a term of four years, except that any director appointed to fill a vacancy shall serve only until the expiration of his predecessor's term.

2. The speaker and the minority leader of the assembly, the president pro-tem and the minority leader of the senate, the city board of estimate acting by majority vote, [~~and~~] the [~~vice-chairman~~] **vice-chairperson** of the city council, **the comptroller of the city of Staten Island and the common council of the city of Staten Island** shall each be entitled to appoint a representative to the board of directors. Each such representative shall be entitled to receive notice of and to attend all meetings of the board of directors but shall not be entitled to vote. No representative shall be an employee or officer of the federal, state or city governments. Each representative shall serve at the pleasure of the appointing official or body, shall be eligible for reappointment, and shall hold office until his **or her** successor has been appointed.

§ 12-012. Subdivision 1 of section 3036 of the public authorities law, as amended by chapter 201 of the laws of 1978, is amended to read as follows:

1. Not less than one hundred twenty days before the beginning of each fiscal year of the corporation (but not later than July 1, 1975 for the fiscal year ending June 30, 1976), the [~~chairman~~] **chairperson** of the board of directors of the corporation shall certify to the state comptroller and to the mayor a schedule setting forth the cash requirements of the corporation for such fiscal year and the time or times when such cash is required. The total amount so certified by such [~~chairman~~] **chairperson** for such fiscal year shall be equal to: (i) the amounts which are required to be deposited in the capital reserve fund authorized to be created and established pursuant to subdivision three of this section during such fiscal year in order to maintain such capital reserve fund of the corporation at the level required in accordance with subdivision five of this section; (ii) the amounts required to be deposited in the debt service fund of the corporation to pay all interest and all payments of principal and redemption premium, if any, on notes and bonds secured by such debt service fund maturing or otherwise coming due during such fiscal year; and (iii) the amounts required to be deposited in the operating fund of the corporation, as determined by the corporation, to meet the operating requirements and other expenses of the corporation during such fiscal year. If any increase shall occur in the cash requirements specified above, or if payments are required at a time or times earlier than previously certified or if the city shall for any reason fail to make timely payment of the principal and accrued interest due on any obligation issued by the city to the corporation and maturing within the same fiscal year, such [~~chairman~~] **chairperson** shall certify a revised schedule of cash requirements for such fiscal year to the state comptroller and to the mayor. The schedule accompanying each certification (or revision thereof) shall provide for such payment dates as the corporation deems appropriate to assure that sufficient funds will be available from the sources identified below to enable it to meet its current obligations as they come due. Upon receipt of such certification, or any revision thereof, the state comptroller shall pay such amount to the corporation for deposit in the appropriate funds, in accordance with such certification from the special account established for the corporation in the municipal assistance tax fund, in accordance with subdivision one of section ninety-two-d of the state finance law, including any amount transferred to the municipal assistance tax fund from the stock transfer tax fund pursuant to subdivision four of section [~~92-b~~] **ninety-two-b** of the state finance law. Any such payment shall be made within thirty days of receipt of the certification or at the time specified in the certification, whichever is later; provided that

any such amounts shall have been first appropriated by the state for such purpose or shall have been otherwise made available. Any amount so paid to the corporation shall be deducted from the amount otherwise payable to the city **or the city of Staten Island, as the case may be,** from the municipal assistance tax fund established by section ninety-two-d of the state finance law and shall not obligate the state to make, nor entitle the city **or the city of Staten Island, as the case may be,** to receive, any additional payments.

§ 12-013. Subdivision 1 of section 3036-a of the public authorities law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

1. In addition to the total amount certified by such [~~chairman~~] **chairperson** for such fiscal year, all as referred to in subdivision one of section three thousand thirty-six, the [~~chairman~~] **chairperson** shall at the same time certify to the state comptroller and to the mayor a schedule setting forth additional cash requirements of the corporation which shall be equal to: (i) the amounts which are required to be deposited in the capital reserve fund authorized to be created and established pursuant to subdivision two of this section (in this section called the capital reserve fund) during such fiscal year in order to maintain the capital reserve fund at the level required in accordance with subdivision four of this section; (ii) the amounts required to be deposited in the bond service fund of the corporation to pay all interest and all payments of principal and redemption premium, if any, on notes and bonds payable from the sources hereinafter identified in this section and maturing or otherwise coming due during such fiscal year; and (iii) the amounts required to be deposited in the operating fund of the corporation heretofore established, as determined by the corporation, to meet the operating requirements and other expenses of the corporation during such fiscal year. If any increase shall occur in such additional cash requirements specified above, or if payments are required at a time or times earlier than previously certified or if the city shall for any reason fail to make timely payment of the principal and accrued interest due on any obligation issued by the city to the corporation and maturing within the same fiscal year, such [~~chairman~~] **chairperson** shall certify a revised schedule of such additional cash requirements for such fiscal year to the state comptroller and to the mayor. The schedule accompanying each certification (or revision thereof) shall provide for such payment dates as the corporation deems appropriate to assure that sufficient funds will be available from the sources identified below to enable it to meet its current obligations under this section as they come due. Upon receipt of such certification, or any revision thereof, the state comptroller shall pay such amount to the corporation for deposit in the appropriate funds referred to in this section, in accordance with such certification from the special account established for the corporation in the municipal assistance state aid fund in accordance with subdivision one of section ninety-two-e of the state finance law and, subject to agreements with outstanding bond and note holders of the corporation, from the special account established for the corporation in the municipal assistance tax fund, in accordance with subdivision one of section ninety-two-d of the state finance law, including any amount transferred to the municipal assistance tax fund from the stock transfer tax fund pursuant to subdivision four of section ninety-two-b of the state finance law. Any such payment shall be made within thirty days of receipt of the certification or at the time specified in the certification, whichever is later; provided that any such amounts shall

have been first appropriated by the state for such purpose or shall have been otherwise made available. Any amount paid to the corporation from such municipal assistance state aid fund shall be deducted from the amount otherwise payable to the city **or the city of Staten Island, as the case may be,** as per capita aid pursuant to sections fifty-four and ninety-two-e of the state finance law and shall not obligate the state to make, nor entitle the city **or the city of Staten Island,** to receive, any additional payments of per capita aid. Any amount so paid to the corporation from the municipal assistance tax fund shall, in addition to the amount deducted pursuant to subdivision one of section three thousand thirty-six, be deducted from the amount otherwise payable to the city **or the city of Staten Island, as the case may be,** from the municipal assistance tax fund and shall not obligate the state to make, nor entitle the city **or the city of Staten Island** to receive, any additional payments from such municipal assistance tax fund.

§ 12-014. Subdivision 1 of section 3036-b of the public authorities law, as amended by chapter 55 of the laws of 1992, is amended to read as follows:

1. In addition to the total amount certified by such [~~chairman~~] **chairperson** for such fiscal year, all as referred to in subdivision one of each of sections three thousand thirty-six and three thousand thirty-six-a of this title, the [~~chairman~~] **chairperson** shall at the same time certify to the state comptroller and to the mayor a schedule setting forth additional cash requirements of the corporation which shall be equal to: (i) the amounts required to be deposited in the bond payment fund of the corporation to pay all interest and all payments of principal and redemption premium, if any, on bonds and notes payable from the sources hereinafter identified in this section and maturing or otherwise coming due during such fiscal year; (ii) the amounts required to be deposited in the operating fund of the corporation heretofore established, as determined by the corporation, to meet the operating requirements and other expenses of the corporation during such fiscal year to the extent not otherwise provided for; and (iii) the amounts required to be deposited in the bond reserve fund created and established pursuant to the agreements of the corporation made with the holders of its bonds or notes issued pursuant to subdivision two-b of section three thousand thirty-three of this title during such fiscal year in order to maintain the bond reserve fund at the level required in accordance with the agreements of the corporation made with the holders of its bonds or notes issued pursuant to subdivision two-b of section three thousand thirty-three of this title. If any increase shall occur in such additional cash requirements specified above, or if payments are required at a time or times earlier than previously certified or if the city shall, for any reason, fail to make timely payment of the principal and accrued interest due on any obligation issued by the city to the corporation and maturing within the same fiscal year, such [~~chairman~~] **chairperson** shall certify a revised schedule of such additional cash requirements for such fiscal year to the state comptroller and to the mayor. The schedule accompanying each certification, or revision thereof, shall provide for such payment dates as the corporation deems appropriate to assure that sufficient funds will be available from the sources identified below to enable it to meet its current obligations under this section as they come due. Upon receipt of such certification, or any revision thereof, the state comptroller shall pay such amount to the corporation for deposit in the appropriate funds referred to in this section, in accordance with such certification and subject to agreements with holders of

outstanding bonds and notes of the corporation, from the special account established for the corporation in the municipal assistance state aid fund in accordance with subdivision one of section ninety-two-e of the state finance law and from the special account established for the corporation in the municipal assistance tax fund in accordance with subdivision one of section ninety-two-d of the state finance law, including any amount transferred to the municipal assistance tax fund from the stock transfer tax fund pursuant to subdivision four of section ninety-two-b of the state finance law. Any such payment shall be made within thirty days of receipt of the certification or at the time specified in the certification, whichever is later; provided that any such amounts shall have been first appropriated by the state for such purpose or shall have been otherwise made available. Any amount paid to the corporation from such municipal assistance state aid fund, in addition to the amount deducted pursuant to subdivision one of section three thousand thirty-six-a of this title, shall be deducted from the amount otherwise payable to the city **or the city of Staten Island, as the case may be,** as per capita aid pursuant to sections fifty-four and ninety-two-e of the state finance law and shall not obligate the state to make, nor entitle the city **or the city of Staten Island** to receive, any additional payments of per capita aid. Any amount so paid to the corporation from the municipal assistance tax fund, in addition to the amount deducted pursuant to subdivision one of each of section three thousand thirty-six or three thousand thirty-six-a of this title, shall be deducted from the amount otherwise payable to the city **or the city of Staten Island, as the case may be,** from the municipal assistance tax fund and shall not obligate the state to make, nor entitle the city **or the city of Staten Island** to receive, any additional payments from such municipal assistance tax fund.

§ 12-015. Section 6 of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, subdivision 1 as amended by chapter 777 of the laws of 1978, subdivision 3 as amended by chapter 869 of the laws of 1975 and subdivision 4 as amended by chapter 201 of the laws of 1978, is amended to read as follows:

§ 6. Administration of the board. 1. The membership of the board shall be the governor, the state comptroller (pursuant to [~~his~~] **such official's** authority to supervise the accounts of any political subdivision of the state), the mayor, the city comptroller**, the mayor of the city of Staten Island, the comptroller of the city of Staten Island,** and three members appointed by the governor with the advice and consent of the senate. At least two of the appointed members shall be residents of the city or have their principal place of business in the city. **The mayor of the city of Staten Island may recommend to the governor the appointment of one such appointed member.** Such appointed members shall serve at the pleasure of the governor. The governor shall be the [~~chairman~~] **chairperson** of the board and the governor or [~~his~~] **the governor's** representative shall preside over all meetings of the board. The board shall act by majority vote of the entire board**, provided, however, on matters affecting only the city, as determined by the governor, the state comptroller and the appointed members, the mayor of the city of Staten Island and the comptroller of the city of Staten Island shall not vote, and on matters affecting only the city of Staten Island, as determined by the governor, the state comptroller and the appointed members, the mayor and the city comptroller shall not vote. Such officials not voting shall not be considered members of the board for determining a**

majority. The board shall maintain a record of its proceedings in such form as it may determine, but such record shall indicate attendance and all votes cast by each member. Every member of the board, who is otherwise an elected official of the state or city, shall be entitled to designate a representative to attend, in [~~his~~] such official's place, meetings of the board and to vote or otherwise act in [~~his~~] such official's behalf. Written notice of such designation shall be furnished to the board by the designating member prior to any meeting attended by [~~his~~] such official's representative. Any such representative shall serve at the pleasure of the designating member. No such representative shall be authorized to delegate any of [~~his~~] such representative's duties or functions to any other person. The lieutenant governor, temporary president of the senate, the minority leader of the senate, speaker and minority leader of the assembly, the president of the council of the city of New York, the city board of estimate acting by majority vote, the speaker and the minority leader of the common council of the city of Staten Island and the [~~vice-chairman~~] vice-chairperson and the minority leader of the council of the city of New York, shall each be entitled to appoint a representative to the board. Each such representative shall be entitled to receive notice of and to attend all meetings of the board but shall not be entitled to vote. No representative shall be an employee or officer of the federal, state or city governments. Each representative shall serve at the pleasure of the appointing official or body, shall be eligible for reappointment, and shall hold office until [~~his~~] such representative's successor has been appointed.

2. Notwithstanding any inconsistent provisions of law, general, special or local, no officer or employee of the state, or political subdivision of the state, any governmental entity operating any public school or college or other public agency or instrumentality or unit of government which exercises governmental powers under the laws of the state, shall forfeit [~~his~~] such person's office or employment by reason of [~~his~~] such person's acceptance or appointment as a member, representative, officer, employee or agent of the board nor shall service as such member, representative, officer, employee or agent of the board be deemed incompatible or in conflict with such office or employment.

3. The members of the board appointed by the governor and all representatives designated by members of the board shall serve without salary or per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties under this act, provided however that such members and representatives are not, at the time such expenses are incurred, public employees otherwise entitled to such reimbursement.

4. The governor and the mayor, jointly, shall appoint an executive director of the board who shall serve at the pleasure of the board and may be removed by the board. The board may delegate to the executive director or to one or more of its other officers, employees or agents, such powers and duties as the board may deem proper, except any duties inconsistent with the duties and functions prescribed by any other office or position any such person may hold.

§ 12-016. Section 7 of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, paragraphs a, b, c, e, f and g of subdivision 1, paragraphs (b) and (f) of subdivision 3 and subdivisions 4 and 6 as amended and subdivision 7 as added by chapter 777 of the laws of 1978, paragraph h of subdivision 1 as amended by chapter 870 of the laws of 1975, para-

graphs d and i of subdivision 1 as amended by chapter 830 of the laws of 1987, subdivisions 3 and 5 as added by chapter 201 of the laws of 1978, and paragraph (i) of subdivision 3 as amended by chapter 285 of the laws of 1985, is amended to read as follows:

§ 7. Functions of the board. 1. In carrying out the purposes of this act, the board shall perform the following functions:

a. In accordance with the provisions of section eight of this act, the board shall (i) consult with the city and the covered organizations **and to the extent it deems it necessary or appropriate to accomplish the purposes of this act, the city of Staten Island,** in the preparation of the financial plan, and certify to the city the revenue estimates approved therein, (ii) prescribe the form of the financial plan and the supporting information required in connection therewith, and (iii) exercise the rights of approval, disapproval and modification with respect to the financial plan, including but not limited to the revenue estimates contained therein.

b. The board, to the extent it deems it necessary or appropriate in order to accomplish the purposes of this act, shall establish and adopt procedures with respect to the (i) proper maintenance of the board fund, (ii) the deposit and investment of revenues in such fund and (iii) disbursement of monies from such fund.

c. The board shall, from time to time and to the extent it deems necessary or appropriate in order to accomplish the purposes of this act, (i) review the operations, management, efficiency and productivity of such city operations and of such covered organizations **or of the city of Staten Island** or portions thereof as the board may determine, and make reports thereon; (ii) audit compliance with the financial plan in such areas as the board may determine; (iii) recommend to the city**, the city of Staten Island** and the covered organizations such measures relating to their operations, management, efficiency and productivity as it deems appropriate to reduce costs and improve services so as to advance the purposes of this act; and (iv) obtain information of the financial condition and needs of the city**, the city of Staten Island** and the covered organizations. Nothing herein shall diminish the powers of the comptroller otherwise provided by law and the board may request the assistance of the comptroller in performing the above functions.

d. The board (i) shall receive from the city and review the reports to be prepared by or on behalf of the city pursuant to section seven-a; (ii) shall receive from the city**, the city of Staten Island** and the covered organizations and from the deputy comptroller, and shall review such financial statements and projections, budgetary data and information, and management reports and materials as the board deems necessary or desirable to accomplish the purposes of this act; and (iii) shall inspect, copy and audit such books and records of the city**, the city of Staten Island** and the covered organizations as the board deems necessary or desirable to accomplish the purposes of this act.

e. All contracts entered into by the city or any covered organization **and, to the extent the board deems necessary or desirable to accomplish the purposes of this act, by the city of Staten Island** must be consistent with the provisions of this act and must comply with the requirements of the financial plan as approved by the board. With respect to all contracts or other obligations to be entered into by the city or any covered organization after October fifteenth, nineteen hundred seventy-five, requiring the payment of funds or the incurring of costs by the city or any covered organization:

(i) Within twenty days from the effective date of this act the mayor shall present to the board proposed regulations respecting the categories and types of contracts and other obligations required to be reviewed by the board pursuant to this subdivision [~~e~~]. Within thirty days from the effective date of this act, the board shall approve or modify and approve such proposed regulations or promulgate its own in the event that such proposed regulations are not submitted to it within the twenty days as provided for herein. Such regulations may thereafter be modified by the board from time to time on not less than thirty days notice to the mayor and the mayor may from time to time propose modifications to the board. Unless expressly disapproved or modified by the board within thirty days from the date of submission by the mayor, any such proposed regulations or modifications shall be deemed approved by the board;

(ii) Prior to entering into any contract or other obligations subject to review of the board under its regulations, the city or any covered organization **and, to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** shall submit a copy of such contract or other obligation to the board accompanied by an analysis of the projected costs of such contract or other obligation and a certification that performance thereof will be in accordance with the financial plan, all in such form and with such additional information as the board may prescribe. The board shall promptly review the terms of such contract or other obligation and the supporting information in order to determine compliance with the financial plan;

(iii) During a control period the board shall, by order, disapprove any contract or other obligation reviewed by it only upon a determination that, in its judgment, the performance of such contract or other obligation would be inconsistent with the financial plan and the city**, the city of Staten Island** or covered organization shall not enter into such contract or other obligation;

(iv) During a control period if the board approves the terms of a reviewed contract or other obligation, the city or covered organization **and, to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** may enter into such contract or other obligation upon the terms submitted to the board. Failure of the board to notify the city**, the city of Staten Island** or covered organization within thirty days (or such additional time not exceeding thirty days as the board shall have notified the city or covered organization, that it requires to complete its review and analysis) after submission to it of a contract or other obligation that such contract or other obligation has been disapproved shall be deemed to constitute board approval thereof.

f. Upon submission thereof by the city, the board shall review the terms of each proposed long-term and short-term borrowing by the city and any covered organization to be effected during a control period but after October fifteenth, nineteen hundred seventy-five, and no such borrowing shall be made unless approved by the board. **To the extent the board deems necessary or desirable to accomplish the purposes of this act, during a control period, the city of Staten Island shall submit and the board shall review the terms of each proposed long-term and short-term borrowing by the city of Staten Island and no such borrowing shall be made unless approved by the board.** Each such proposed borrowing by a covered organization shall be submitted to the city by the covered organization before it may be considered by the board. Not more than thirty days after any such submission by a covered organization the city

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 [~~muncipal~~] **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.

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.**

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.

i. The board shall coordinate with the municipal assistance corporation for the city of New York and the deputy comptroller with respect to the performance of its review and monitoring of the revenues and expenditures of the city and the covered organizations.

2. In the event of any default by the city on its outstanding bonds or notes, and so long as such default has not been cured **by the city**, the board may, any provisions of this act notwithstanding, take any action that it is authorized to take pursuant to title six-A of article two of the local finance law, and may direct the city to take any action that the city is authorized to take under such law.

3. (a) Notwithstanding any provision of the New York City Collective Bargaining Law, codified as chapter [~~fifty-four~~] **three of title twelve** of the New York city administrative code, or any general or special law to the contrary, any report or recommendation of an impasse panel constituted pursuant to such chapter which provides for an increase in wages or fringe benefits of any employee of the city or covered organization, in addition to considering any standard or factor required to be considered by applicable law, including the standards enumerated in section [~~1173-7.0~~] **12-311**(c)(3)(b) of such chapter, shall also take into consideration and accord substantial weight to the financial ability of the city and or covered organization to pay the cost of such increase in wages or fringe benefits.

(b) The board of collective bargaining constituted pursuant to such chapter, when reviewing such report or recommendation before proceeding to other issues, shall make a threshold determination as to whether such report or recommendation for an increase in wages or fringe benefits is within the city's and or covered organization's financial ability to pay. If the threshold determination is in the negative, the matter shall be remitted to the impasse panel for further consideration. If the threshold determination is in the affirmative, the further review of the report or recommendation with respect to other issues, if any, shall proceed as provided by law. Unless the parties stipulate otherwise, the threshold determination shall be made within thirty days after submission of the report or recommendation to the board of collective bargaining.

(c) Any determination pursuant to article eight of the labor law or any agreement or stipulation entered into in lieu thereof which provides for an increase in wages or fringe benefits of any employee of the city or covered organization shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city and or covered organization to pay the cost of such increase.

(d) Any report or recommendation of a fact finding or similar type panel or any interest arbitration award which provides for an increase in wages or fringe benefits of any employee of the city or covered organization not subject to the provisions of the New York City Collective Bargaining Law, codified as chapter [~~fifty-four~~] **three of title twelve** of the New York city administrative code, shall, in addition to considering any standard or factor required to be considered by applicable law, also take into consideration and accord substantial weight to the financial ability of the city and or covered organization to pay the cost of such increase.

(e) Any party to a proceeding before the board of collective bargaining as described in paragraph (b) or other body as described in paragraphs (c) or (d) [~~hereof~~] **of this subdivision** may commence a special proceeding in the appellate division, first department, supreme court,

state of New York, to review the threshold determination as to the city and/or covered organization's financial ability to pay. Such proceeding shall be commenced not later than thirty days after the final determination has been made by the board of collective bargaining in the case of paragraph (b) or other body in the case of paragraphs (c) or (d) **of this subdivision**. Such proceeding shall have preference over all other causes in such appellate division, other than causes relating to the election law.

(f) The court shall make a de novo review of the record solely for the purpose of determining whether an award of an increase in wages or fringe benefits was within the city's and or covered organization's financial ability to pay. The court's findings as to such issue shall be based upon a preponderance of all the evidence set forth in the record. Unless the parties stipulate otherwise, arguments or submission shall be had within fifteen days after commencement of the special proceeding and the court shall render its decision within fifteen days thereafter. All questions, other than the question relating to the threshold determination, shall be reviewed by the appellate division in the same proceeding in the manner provided by articles seventy-five or seventy-eight of the civil practice law and rules as may be appropriate, notwithstanding that the issue would otherwise have been cognizable in the first instance before a special or trial term of the supreme court. If an appeal shall otherwise lie from such determination of the appellate division to the court of appeals, notice of such appeal shall be filed within thirty days after the entry of the final order or judgment of the appellate division if such appeal is of right or within ten days after entry of an order granting leave to appeal and such appeal shall have preference over all other appeals other than appeals relating to the election law.

(g) At any stage of any proceeding under paragraphs (a), (b), (c), (d) and (e) hereof or any appeal from an order or judgment therefrom, the board may intervene as a party on the issue of the financial ability of the city and or covered organization to pay the cost of an increase in wages or fringe benefits.

(h) For the purposes of this subdivision, financial ability to pay shall mean the financial ability of the city and or covered organization to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes existing at the time of the commencement of a proceeding under paragraph (a), (c) or (d) hereof.

[~~(i) The provisions of this subdivision shall terminate on June thirtieth, nineteen hundred eighty-six.~~]

4. During a control period, except upon approval by the board in accordance with the provisions of paragraph e or f of subdivision one of this section, as the board shall determine, neither the city nor a covered organization **nor, to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** shall enter any agreement or other arrangement, whether or not it creates a debt of the city**, the city of Staten Island** or a covered organization, pursuant to which the revenues or credit of the city **or the city of Staten Island** may be directly or indirectly pledged, encumbered, committed or promised, contingently or otherwise, for the payment of obligations of a public benefit corporation. Nothing in this subdivision shall limit the right of the city to comply with the provisions of any existing agreement or other arrangement in respect of the obligations of a public benefit corporation.

5. The board may employ such consultants as it may deem necessary to assist it in performing its functions required under this act.

6. The board shall have the authority to make and execute agreements and all other instruments which the board deems necessary for the exercise of its powers and functions including, in connection with any agreement by the federal government or any agency or instrumentality thereof to guarantee the payment of the principal of or interest on bonds or notes issued by the city or by a state financing agency, to enter into one or more agreements containing terms and conditions required by the secretary of the treasury pursuant to the New York City Loan Guarantee Act of l978, Public Law 95-339 with the federal government or any agency or instrumentality thereof with respect to such guarantee or any matters related thereto and to comply with such terms and conditions.

7. The board may appoint qualified individuals to participate as members of such audit, productivity or similar committees or councils as the city may from time to time establish in consultation with the board. Such individuals, however, shall not be deemed to be officers, employees or agents of the board. The board shall review and report on, not less than annually, the development and implementation of methods for enhancing the productivity of the city's labor force proposed by any such committee or council.

§ 12-017. Section 8 of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, subdivisions 1, 2, 4, 5 and 6 as amended by chapter 201 of the laws of 1978, the opening paragraph and paragraph c of subdivision 1, subdivisions 2-a and 3 as amended by chapter 777 of the laws of 1978, paragraph a of subdivision 1 as amended by chapter 118 of the laws of 2020, is amended to read as follows:

§ 8. Development of the financial plan. 1. Pursuant to the procedures contained in subdivision three of this section, each year the city **and to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** shall develop, and may from time to time modify, with the approval of the board during a control period, a four year financial plan covering the city and the covered organizations **or the city of Staten Island, as applicable**.

Each such financial plan and financial plan modification shall comply with the requirements of subdivision four of this section and shall, except as otherwise provided pursuant to subdivision two-a of this section, conform to the following standards:

a. For its fiscal years ending June thirtieth, nineteen hundred seventy-nine through June thirtieth, nineteen hundred eighty-one, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with the accounting principles set forth in the state comptroller's uniform system of accounts for municipalities, as the same may be modified by the comptroller, in consultation with the city comptroller, for application to the city; subject to the provision of subdivision four of section three thousand thirty-eight of the public authorities law with respect to contributions by the city or other public employer to any retirement system or pension fund and subject to the provision of paragraph (c) of subdivision five of section three thousand thirty-eight of the public authorities law with respect to expense items included in the capital budget of the city. For the fiscal year ending June thirtieth, nineteen hundred eighty-two, and for each fiscal year thereafter, the city's budget covering all expenditures

other than capital items shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles. With respect to financial plans that include the fiscal years ending June thirtieth, nineteen hundred seventy-nine through June thirtieth, nineteen hundred eighty-one, the city's budget covering all expenditures other than capital items shall be prepared in accordance with generally accepted accounting principles and there shall be substantial progress in each such fiscal year towards achieving a city budget covering all expenditures other than capital items the results of which would not show a deficit when reported in accordance with generally accepted accounting principles. The city shall eliminate expense items from its capital budget not later than the commencement of the fiscal year ending June thirtieth, nineteen hundred eighty-two. For the fiscal year ending June thirtieth, nineteen hundred eighty-nine, and for each fiscal year thereafter, the budgets covering all expenditures other than capital items of each of the covered organizations shall be prepared and balanced so that the results thereof would not show a deficit when reported in accordance with generally accepted accounting principles; and for each fiscal year prior thereto, there shall be substantial progress towards such goal. Notwithstanding the foregoing and the provisions of any general or special state law or local law to the contrary, including but not limited to the New York city charter: (i) all costs that would be capital costs in accordance with generally accepted accounting principles, but for the application of governmental accounting standards board statement number forty-nine, shall be deemed to be capital costs for purposes of this act and any other provision of state or local law, including but not limited to the New York city charter, relevant to the treatment of such costs; and (ii) the determination as to the existence of a deficit pursuant to this act and any other provision of state or local law, including but not limited to the New York city charter, shall be made without regard to changes in restricted fund balances, as defined by the governmental accounting standards board, where restrictions in relation to such fund balances are imposed by state or federal law or regulation, or otherwise by private or governmental parties other than the city of New York, and without regard to funds held in the health stabilization fund, the school crossing guards health insurance fund, any revenue stabilization fund established pursuant to section fifteen hundred twenty-eight of the New York city charter and the management benefits fund established by the city of New York. Deposits into any such revenue stabilization fund shall be deemed to be expenses of such city in the fiscal year in which such deposits are made, and withdrawals from such fund shall be deemed to be revenues of such city in the year in which such withdrawals are made; provided however, that surpluses of such city, whether accumulated from fiscal years ending prior to the effective date of the chapter of the laws of two thousand twenty that amended this paragraph or existing at the close of any fiscal year ending after such effective date, shall be deposited into such revenue stabilization fund as soon as practicable, and such deposits shall not be deemed expenses of the city in the fiscal year in which such deposits are made.

b. The limitations on its outstanding short-term obligations required by subdivision nine of section three thousand thirty-eight of the public

authorities law and by section nine-b of this act shall be observed at all times, as each is amended from time to time.

c. Provision shall be made for the payment in full of the debt service on all bonds and notes of the city and the covered organizations (other than notes held by the municipal assistance corporation for the city of New York to the extent that such corporation has evidenced its intention not to present such notes for payment during the fiscal year in which the determination is made provided that such notes were held by such corporation on June thirtieth, nineteen hundred seventy-eight or were issued in exchange for or in refunding or renewal of notes held by such corporation on such date) **and to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island**, for the adequate funding of programs of the city**, the city of Staten Island, if applicable** and the covered organizations which are mandated by state or federal law and for which obligations are going to be incurred during the fiscal year and for payment of a guarantee fee or any other amounts required by the United States of America or any agency or instrumentality thereof in connection with the guarantee of the payment of the principal of or interest on bonds or notes issued by the city.

d. All projections of revenues and expenditures contained in a financial plan shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city**, the city of Staten Island, if applicable** and covered organizations to be conducted within the cash resources so projected.

e. The city shall provide a general reserve for each fiscal year to cover potential reductions in its projected revenues or increases in its projected expenditures during each such fiscal year. The amount provided for such general reserve shall be estimated by the city in accordance with paragraph d of this subdivision, but in no event shall it be less than one hundred million dollars at the beginning of any fiscal year.

f. For financial plans beginning with the fiscal year ending June thirtieth, nineteen hundred eighty-three or any succeeding fiscal year, the first fiscal year included in any financial plan shall make provision for the repayment of any deficit incurred by the city during the preceding fiscal year.

2. In developing the financial plan the city shall seek to achieve a stabilized work force for the city and, to the extent a reduction in the work force is required, primary recourse shall be had to the attrition process to accomplish such reduction.

2-a. The city and the board shall confer concerning the projected effect on the budgets of the city and the covered organizations of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city and the covered organizations, made after the effective date of this act. If the board determines that immediate compliance with such change will have a material effect on such budgets over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the board may authorize and approve a method of phasing the requirements of such change into such budgets over such reasonably expeditious time period as the board deems appropriate.

3. The financial plan shall be developed and, during a control period, shall be approved, and may from time to time be modified, in accordance with the following procedures:

a. The city shall, by June first, nineteen hundred seventy-eight, prepare and submit a financial plan to the board covering the four year period which begins with the fiscal year ending June thirtieth, nineteen hundred seventy-nine. Thereafter, at least fifty days prior to the beginning of each fiscal year or on such other date as the board may approve upon the request of the city **or the city of Staten Island, if applicable**, the city**, and, 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 prepare and submit a financial plan to the board covering the four year period beginning with such fiscal year. On such dates the mayor shall also submit to the board the city's executive expense, revenue and capital budgets for the ensuing fiscal year and a certificate of the mayor stating that such budgets are consistent with the financial plan submitted therewith, that projections contained in the budgets and financial plan are based upon reasonable and appropriate assumptions and methods of estimation, and that operation within the budgets is feasible.

b. (i) During a control period the board shall promptly review each financial plan and financial plan modification submitted by the city **or, the city of Staten Island, if applicable**. Not more than forty-five days after submission of a financial plan or more than thirty days after submission of a financial plan modification the board shall determine whether the financial plan or financial plan modification is complete and complies with the standards set forth in subdivision one of this section and shall approve or disapprove the financial plan or financial plan modification in accordance with the provisions of this section. If the board determines that the financial plan or financial plan modification is complete and complies with the standards set forth in subdivision one of this section, the board shall approve the financial plan or financial plan modification. Upon making such determination the board shall make a certification to the city **or, the city of Staten Island, if applicable,** setting forth revenue estimates approved by the board in accordance with such determination.

(ii) At all times other than during a control period the board shall promptly review each financial plan and financial plan modification submitted by the city. If the board determines after such review that the financial plan or financial plan modification submitted by the city is not in accordance with the standards set forth in subdivision one of this section, the board shall promptly so notify the city and may take such other action under this act as it deems appropriate.

c. The board shall disapprove a financial plan or financial plan modification if during a control period it determines that the financial plan or financial plan modification is incomplete or fails to comply with the provisions of subdivision one of this section. In disapproving a financial plan or a financial plan modification the board may order that one or more of the following actions be taken:

(i) expenditures or reserves to assure availability of amounts required for debt service requirements on all bonds and notes of the city**, the city of Staten Island, if applicable** and the covered organizations or expenditures required for adequate funding of programs of the city**, the city of Staten Island, if applicable** and the covered organizations mandated by state or federal law and for which obligations are

going to be incurred during the fiscal year, be increased to the levels required to provide for their payment in full;

(ii) the revenue projections (or any item thereof) during any period be adjusted to comply with the standards set forth in subdivision one of this section; and

(iii) the aggregate expenditures projected for any period be reduced to conform to revenue estimates certified by the board in order to comply with the standards set forth in subdivision one of this section.

d. During a control period in the event that the city **or the city of Staten Island, if applicable** shall, for any reason, fail to submit a financial plan prior to the beginning of a fiscal year, as required by paragraph a of this subdivision, or in the event that the board has not, for any reason permitted under this act, approved a financial plan submitted by the city **or the city of Staten Island, if applicable** prior to the beginning of a fiscal year, the board shall formulate and adopt a financial plan to be effective until the board approves a financial plan submitted by the city **or the city of Staten Island, if applicable**. Any financial plan so formulated by the board shall comply with the standards set forth in subdivision one of this section. The budgets and operations of the city **or the city of Staten Island, if applicable** and the covered organizations at all times shall be in conformance and compliance with the **respective** financial plan then in effect.

e. After the initial adoption by the city, or the approval by the board during a control period, **or, during a control period, to the extent the board deems necessary or desirable to accomplish the purposes of this act, the initial adoption by the city of Staten Island,** of a financial plan, projections of revenues and expenditures and other estimates contained in the financial plan shall be reexamined by the board at least quarterly in consultation with the city and the covered organizations, and during a control period the city **or the city of Staten Island, as applicable** shall prepare and submit to the board financial plan modifications at such times, in such detail and within such time periods as the board may require in order to modify the **respective** financial plan to conform to the standards set forth in subdivision one of this section. During a control period in the event the board determines that (i) revenue estimates (or any item thereof) must be adjusted to ensure compliance with the standards set forth in subdivision one of this section, or (ii) that the city or a covered organization **or the city of Staten Island, as applicable** is expending funds at a rate that would cause expenditures to exceed the aggregate expenditure limitation for the city or covered organization **or the city of Staten Island, as applicable** provided for in the financial plan then in effect, prior to the expiration of the fiscal year, the city **or the city of Staten Island, as applicable** shall submit a financial plan modification to effect such adjustments in revenue estimates and reductions in total expenditures as may be necessary to conform to such standards or aggregate expenditure limitations. If during a control period the city fails to submit such modification after such determination as to adjustments in revenue estimates or such determination as to rates of expenditures, or to submit a financial plan modification in the detail or within the time period specified by the board, or if such modification is disapproved by the board as not conforming to the standards set forth in subdivision one of this section, the board may formulate and adopt such financial plan modification as it deems appropriate to ensure that the financial plan **with respect to such entity** continues to meet such standards. Such modification shall become effective on its adoption.

Notwithstanding the provisions of this section, in the event the city **or the city of Staten Island, as applicable** shall determine that, due to unforeseen events during a fiscal year, compliance with the standards set forth in paragraph a of subdivision one of this section would result in a material adverse impact upon the delivery of essential services, the city **or the city of Staten Island, as applicable** shall notify the board of such determination, together with such information, projections or analyses relating thereto as the board may require, and shall submit a modification to the financial plan reflecting such determination. During a control period the board shall disapprove any such modification unless it finds that (i) [~~the city's~~] **such** determination is supported by information, projections and analyses which the board deems substantially accurate in all material respects and (ii) such events, in its judgment, warrant such modification to the financial plan to avoid such adverse impact on the delivery of essential services.

f. The city **or the city of Staten Island** may, from time to time, submit financial plan modifications **to each plan** for review by the board. During a control period the board shall approve such modifications unless it determines that such modifications would constitute grounds for disapproval of the financial plan pursuant to paragraph c of this subdivision, or if applicable, pursuant to paragraph e of this subdivision.

g. Anything contained in this act to the contrary notwithstanding, during a control period the board may at any time disapprove or after consultation with the city **or the city of Staten Island, as appropriate,** revise the revenue estimates (or any item thereof) prepared by the city **or the city of Staten Island** in connection with the preparation of a financial plan or any modification thereto and determined by the board not to be based on assumptions and methods of estimation which are reasonable and appropriate under the circumstances and in view of the objectives and purposes of the act. The board may after consultation with the city **or the city of Staten Island, as appropriate,** determine the estimated revenues of the city **or the city of Staten Island, as appropriate,** and the covered organizations provided, however, that any revenues estimated by the board shall be based on reasonable and appropriate assumptions and methods of estimation.

4. Each financial plan shall be in such form and shall contain such information for each year during which the financial plan is in effect as the board may specify, and shall, in such detail as the board may from time to time prescribe, include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city **or the city of Staten Island, as appropriate,** and except in such instances as the board may deem appropriate each of the covered organizations. In addition, each financial plan and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein, set forth in such form and in such detail as the board may from time to time prescribe.

5. The city and the covered organizations **and 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 promptly furnish the board with any information which the board may request to satisfy itself that (i) projected employment levels, collective bargaining agreements and other action relating to employee costs, capital construction and such other matters as the board may specify, are

consistent with the provisions made for such costs in the financial plan, (ii) the city and the covered organizations **or the city of Staten Island, as appropriate** are taking whatever action is necessary with respect to programs mandated by state and federal law to ensure that expenditures for such programs are limited to and covered by the expenditures stated in the financial plan, and (iii) adequate reserves are provided to maintain programs mandated by state and federal law and for which obligations are going to be incurred in the fiscal year and other essential programs in the event revenues have been overestimated or expenditures underestimated for any period.

6. For each financial plan and financial plan modification to be prepared and submitted by the city to the board pursuant to the provisions of this section, the covered organizations shall submit to the city such information with respect to their projected expenditures, revenues, cash flows and a schedule of projected capital commitments for each year covered by such financial plan or modification as the city shall determine. Notwithstanding any other provision of law limiting the authority of the city with respect to any covered organization, the city, in the preparation and submission of the financial plan and modifications thereof, shall (except for debt service or for other expenditures to the extent that such expenditures are required by law) have the power to determine the aggregate expenditures to be allocated to any covered organization in the financial plan and any modifications thereto.

§ 12-018. Section 9 of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, as amended by chapter 201 of the laws of 1978 and the section heading and subdivisions 1 and 4 as amended by chapter 777 of the laws of 1978, is amended to read as follows:

§ 9. Establishment and application of the board fund. 1. There is hereby established a fund designated the board fund. Commencing on October twentieth, nineteen hundred seventy-five, and for the duration of a control period, all revenues received or to be received by the city or any covered organization **and to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** shall, unless exempted by order of the board, be revenues of the board fund and shall be for the account of the city**, the city of Staten Island** or the appropriate covered organizations, except (i) to the extent expressly prohibited by federal law, (ii) where revenues of the city are deposited in the general debt service fund, the TAN debt service account or the RAN debt service account, or (iii) where such revenues are pledged to the payment of any outstanding bonds, notes or other obligations of covered organizations or state public authorities as defined in section two hundred one of the civil service law. Disbursement from the board fund shall be made by the board in accordance with the approved financial plan except as provided in subdivision five of this section nine. Commencing on October twentieth, nineteen hundred seventy-five, and for the duration of a control period, all funds and accounts established or thereafter established by the city**,** **the city of Staten Island** or the covered organizations shall, unless exempted by order of the board, thereafter be funds and accounts of the board fund except to the extent expressly prohibited by federal law or to the extent pledged by covenants or agreements relating to any outstanding bonds, notes or other obligations of covered organizations or public authorities as defined in section two hundred one of the civil service law; and no monies or funds held in the general debt service

fund, the TAN debt service account or the RAN debt service account shall be part of the board fund. All such accounts of the board shall have such captions and entries as the board shall determine to be necessary to credit the foregoing revenues and receipts to the board fund. The monies of the fund shall not be deemed to be money of the state or money under its control.

2. The deposit of revenues into the board fund and the investment or deposit of monies therein shall be made in accordance with and pursuant to procedures established by the board.

3. In order to assure compliance with the financial plan, the board shall from time to time adopt procedures controlling the disbursement of monies from the board fund. The board shall authorize the city **or, if applicable, the city of Staten Island** to make all disbursements of [~~city~~] **such entity's** revenues from the board fund, which disbursements shall be made in accordance with the approved financial plan; provided, that the board may withdraw such authorization if it determines that (a) any disbursements made or to be made by the city **or, if applicable, the city of Staten Island** have not been or are likely not to be in compliance with the approved financial plan, (b) the city **or, if applicable, the city of Staten Island** has violated any other provisions of this act, or (c) the city has violated an agreement with any holder or guarantor of bonds or notes issued by the city or a state financing agency.

4. Within the board fund there is hereby established a special account designated the debt service repayment account. The board shall from time to time direct, in accordance with procedures adopted by the board, the deposit in the debt service repayment account of such amounts as the board shall, in its discretion, determine to be sufficient to meet the debt service requirements of the covered organizations on their bonds and notes (other than bonds and notes of covered organizations payable from revenues not included in the board fund) as they become due. Amounts in the debt service repayment account shall be used to meet such debt service requirements of the covered organizations.

5. If at any time the board determines that the amount then held in the board fund or the amount estimated by the board to be held in the board fund is or will be insufficient to meet the expenditures in the amounts and at the times required by the financial plan, the board shall require disbursements from the board fund to be made in the following order or priority unless otherwise required by law of the United States of America: (i) the payment of amounts from the **appropriate account of the** board fund to the debt service repayment account, the general debt service fund, the TAN debt service account and the RAN debt service account, to maintain therein the amount required, to meet debt service requirements of the city**, the city of Staten Island, if appropriate** and the covered organizations on their bonds and notes as they may become due, (ii) the payment of other liabilities having statutory or contractual priority over remaining liabilities of the city **, the city of Staten Island, if appropriate** and the covered organizations whose monies are included in the board fund, and (iii) the payment of other obligations on an allocated basis as specified by the city **or, the city of Staten Island, if appropriate,** for expenditures in accordance with the financial plan provided that, in the event that the city **or, the city of Staten Island, if appropriate,** fails to so specify, the board may withhold payment of any of such other obligations or may direct their payment pro rata.

6. The board shall cause to be performed such pre-audit and post-audit reviews of the board funds and disbursements therefrom as it may determine.

§ 12-019. Section 9-a of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, as added by chapter 201 of the laws of 1978, subdivisions 1, 2, 3, 4, 6, 7, 8, 9 and 11 as amended, subdivision 10 as renumbered and amended and subdivision 12 as added by chapter 777 of the laws of 1978, is amended to read as follows:

§ 9-a. Establishment and application of a general debt service fund. 1. Commencing on the first day of the first full fiscal quarter subsequent to the first sale of a federally guaranteed city obligation, the city shall establish a general debt service fund for the purpose of paying debt service due or becoming due in the then current fiscal year and in subsequent fiscal years **until the later of (i) the termination date of this act or (ii) the date when all general obligation bonds of the city outstanding as of the establishment of the city of Staten Island have been paid or payment therefor has been provided for in accordance with their terms**. All monies in the fund shall be held by the comptroller, who shall administer and maintain the fund in accordance with the provisions of this section.

2. All payments of or on account of real estate taxes or assessments **due to the city or the city of Staten Island**, other than the proceeds of tax anticipation notes, shall be immediately upon receipt deposited in **an account designated for the municipality to which payment was due established in** such fund. The comptroller shall retain, disburse and apply monies in the fund during each month as follows:

a. During the first month of each fiscal quarter, there shall be retained in the fund, subject to the provisions of subdivision three of this section, all real estate tax payments deposited in the fund until there shall have been retained from monies so deposited during such month **in the applicable account** an amount equal to the total monthly debt service, computed as of the date of any disbursement of money from the fund, for the second and third months of such fiscal quarter; provided that such amount shall be reduced by any amount already on deposit in the fund which may be used to pay the monthly debt service for such months.

**Amounts to be on deposit in such accounts shall be determined as follows: (i) with respect to the account of the city, debt service shall include payments with respect to (a) all bonds and notes of the city issued on or after the date of establishment of the city of Staten Island and (b) all bonds or notes of the city prior thereto multiplied by a fraction, the numerator of which is the total assessed valuation of all taxable real property located in the city as of the date of such establishment and the denominator of which is the total assessed valuation of all taxable real property located in the city and the city of Staten Island combined as of the date of such establishment and (ii) with respect to the account of the city of Staten Island, debt service shall include payments with respect to (a) all bonds or notes of the city of Staten Island and (b) all bonds or notes of the city issued prior to the establishment of the city of Staten Island multiplied by a fraction, the numerator of which is the total assessed valuation of all taxable real property located in the city of Staten Island as of the date of such establishment and the denominator of which is the same as in clause (b) of subparagraph (i) of this paragraph. To the extent either account contains insufficient amounts to make payments on the**

respective allocable portion of city bonds or notes issued prior to the establishment of the city of Staten Island and such municipalities own bonds or notes issued subsequent thereto, amounts on deposit in the account of the other municipality in excess of the amounts required to provide for payment of such latter municipality's own bonds or notes issued subsequent to such establishment and allocable portion of city bonds or notes issued prior thereto, shall be retained in such account and applied to the payment of bonds or notes of the city issued prior to such establishment to the extent of any insufficiency in such accounts.

For purposes of this section, fiscal quarter shall mean the three-month period beginning July first, October first, January first or April first, and monthly debt service shall mean, as of any date of computation, the amount of monies equal to the aggregate of (i) all interest payable during such month on bonds and notes of the city or the city of Staten Island, as applicable, plus (ii) the amount of principal (including payments into sinking funds) maturing or otherwise coming due during such month on all bonds of the city or the city of Staten Island, as applicable, (excluding principal payments made from sinking funds required by the terms of certain city or the city of Staten Island, as applicable, bonds), plus (iii) the amount of principal to be paid on notes of the city or the city of Staten Island, as applicable, during such month from sources other than the proceeds of bonds or renewal notes (exclusive of revenue anticipation notes and tax anticipation notes or renewals thereof issued less than two years prior to the date of computation).

b. During the second and third months of each fiscal quarter, there shall be retained in the fund, subject to the provisions of subdivision three of this section, all real estate tax payments deposited in the fund until there shall have been retained from monies so deposited during such month an amount equal to the total monthly debt service, computed as of the date of any disbursement of monies from the fund, for the first month of the next succeeding fiscal quarter; provided that such amount shall be reduced by any amount already on deposit in the fund which may be used to pay the monthly debt service for such month.

c. During any month of a fiscal quarter, after the retentions required by paragraphs a and b of this subdivision have been made for such month, the comptroller shall deposit any remaining balance of real estate taxes received during such month, first into the TAN debt service account to the extent required under subdivision six of this section, and second into the board fund to be applied in accordance with procedures of the board.

d. The city may at any time pay into the fund any monies required by law to be used to pay monthly debt service and any other monies available for such purpose.

3. The board may approve, subject to agreements made with the holders or guarantors of outstanding notes or bonds issued by or for the benefit of the city after the effective date of this act, criteria for calculating a proportion of real estate tax receipts to be retained in the fund in order to provide for the retention of amounts required by the provisions of subdivision two of this section in lieu of the retention of all initial receipts as required by such subdivision; provided, that if the board at any time determines that retentions in the fund pursuant to the provisions of such subdivision are or are likely to be insufficient to provide for the payment of monthly debt service when due, in order to ensure that the amounts on deposit in the fund will be sufficient to pay monthly debt service when due, the board shall require (i)

that real estate tax receipts be retained in the fund in greater amounts or at earlier dates than the provisions of such subdivision require, or (ii) that other revenues or cash resources of the city be paid into the fund. The board shall consider the impact of earlier or larger retention of real estate tax receipts on the city's seasonal borrowing requirements when determining whether it shall require such additional retention or that other revenues or cash resources of the city be paid into the fund. Prior to the issuance by the city of any bonds or notes, the board shall review any criteria then in effect which determine the proportion of real estate tax receipts to be retained in the fund to determine whether the proposed debt service schedule for such bonds or notes is consistent with the monies which will be available therefor or whether such criteria should be revised. The board shall from time to time take such action as it determines is necessary, including disapproval of a proposed issue pursuant to paragraph f of subdivision one of section seven, so that the monies in the fund shall be adequate to meet debt service requirements.

4. Commencing on the first day of the second month of the first full fiscal quarter subsequent to the first sale of a federally guaranteed city obligation, the payment of monthly debt service shall be made, first, from amounts retained in the fund. Amounts retained in the fund shall be used only to pay debt service of the city.

5. Upon the issuance of any tax anticipation notes following the effective date of this act, the comptroller shall establish and, so long as any tax anticipation notes shall be outstanding, shall maintain a tax anticipation note debt service account within the fund for the purpose of paying the principal of tax anticipation notes.

6. The city shall determine the date on which the principal due or to become due on an outstanding issue of tax anticipation notes shall equal ninety percent of the available tax levy with respect to such issue, and upon reasonable notice thereof the comptroller shall commence on such date to pay into the TAN debt service account from collections of such taxes and assessments, after retaining amounts required to be deposited in the fund, amounts sufficient to pay when due, the principal of such issue of tax anticipation notes. The payments of the principal of tax anticipation notes shall be made, first, from amounts retained in the TAN debt service account.

7. Upon the issuance of any revenue anticipation notes following the effective date of this act, the comptroller shall establish and, so long as any revenue anticipation notes shall be outstanding, shall maintain a revenue anticipation note debt service account within the fund for the purpose of paying the principal of revenue anticipation notes. Each specific type of revenue in anticipation of which such notes are issued and available for such purpose shall be deposited in such account immediately upon receipt by the city. Where such revenue consists of state aid or other revenue to be paid to the city by the comptroller, on the date such revenue is payable to the city, the comptroller shall deposit such revenue directly into such account in lieu of payment to the city. All revenues deposited in the RAN debt service account shall be paid immediately into the board fund except as otherwise provided in subdivision eight of this section.

8. The city shall determine the date on which the principal due or to become due on an outstanding issue of revenue anticipation notes shall equal ninety percent of the total amount of revenue against which such notes were issued remaining to be paid to the city on or before the fifth day prior to the maturity date of such notes and upon reasonable

notice thereof the comptroller shall commence on such date to retain in the RAN debt service account from amounts deposited or to be deposited therein of each specific type of revenue in anticipation of which revenue such anticipation notes were issued, an amount sufficient to pay, when due, the principal of such revenue anticipation notes. Monies retained in such account shall vest immediately in the comptroller in trust for the benefit of the holders of the revenue anticipation notes in anticipation of which such notes were issued. No person having any claim of any kind in tort, contract or otherwise against such city shall have any right to or claim against any monies of the state appropriated by the state and in anticipation of which such notes have been issued, other than a claim for payment by the holders of such notes, and such monies shall not be subject to any order, judgment, lien, execution, attachment, setoff or counter-claim by any such person; provided, however, that nothing contained in this paragraph shall be construed to limit, impair, impede or otherwise adversely affect in any manner the rights or remedies of the purchasers and holders and owners of any bonds or notes of the state or any agency, instrumentality, public benefit corporation or political subdivision thereof, including the city of New York, under which such purchasers and holders and owners have any right of payment of such bonds or notes by recourse to state aid or local assistance monies held by the state or for the payment of which bonds or notes state aid or local assistance monies are a designated source. The payment of the principal of revenue anticipation notes shall be made first from amounts retained in the RAN debt service account.

9. Whenever the amount contained in the TAN debt service account or the RAN debt service account exceeds the amount required to be retained in such account such excess monies, including earnings on investments of monies in the fund, shall be withdrawn from such account and paid into the board fund.

10. Subject to agreements made with holders or guarantors of outstanding notes or bonds issued by or for the benefit of the city after the effective date of this act, the comptroller shall invest the monies retained in the fund in accordance with law.

11. The limitations imposed upon the city by this section shall be in addition to any limitations imposed upon the city **or the city of Staten Island** under the local finance law. In the event any provisions of the local finance law shall be inconsistent with the provisions of this section, the provisions of this section shall prevail. The requirements of this section shall not apply to any note of the city held by the municipal assistance corporation for the city of New York to the extent that such corporation has evidenced its intention not to present such notes for payment during the fiscal year in which the determination is made provided that such notes were held by such corporation on June thirtieth, nineteen hundred seventy-eight or were issued in exchange for or in refunding or renewal of notes held by such corporation on such date.

12. Notwithstanding any other provision of this section, the city **and the city of Staten Island, if applicable,** may, at any time, subject to approval by the comptroller, designate a trust company or bank having its principal place of business in the state of New York and having the powers of a trust company in the state of New York to hold all or any part of the monies in the fund and to administer and maintain the monies so held in accordance with the applicable provisions of this section and any agreements made pursuant thereto.

§ 12-020. Section 11 of section 2 of chapter 868 of the laws of 1975, constituting the New York state financial emergency act for the city of New York, subdivisions 1 and 3 as amended by chapter 777 of the laws of 1978, is amended to read as follows:

§ 11. Prohibitions; penalties. 1. During a control period, (i) no officer or employee of the city or of any of the covered organizations **or to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island** shall make or authorize an obligation or other liability in excess of the amount available therefor under the financial plan as then in effect; (ii) no officer or employee of the city or of any of the covered organizations **or the city of Staten Island** shall involve the city**, the city of Staten Island, if applicable** or any of the covered organizations in any contract or other obligation or liability for the payment of money for any purpose required to be approved by the board unless such contract, obligation or liability has been so approved or deemed to be approved as provided in paragraphs e and f of subdivision one of section seven and unless such contract or obligation or liability is in compliance with the financial plan as then in effect.

2. No officer or employee of the city or any of the covered organizations**, or, the city of Staten Island, if applicable,** shall take any action in violation of any valid order of the board or shall fail or refuse to take any action required by any such order or shall prepare, present or certify any information (including any projections or estimates) or report for the board or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the board or its agents thereof.

3. In addition to any penalty or liability under other law, any officer or employee of the city or any of the covered organizations**, or, the city of Staten Island, if applicable,** who shall knowingly and willfully violate subdivision one or two of this section shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office by order of either the governor or the mayor **or the mayor of the city of Staten Island, if applicable,** and shall, upon conviction, be guilty of a misdemeanor.

4. In the case of a violation of subdivision one or two of this section by an officer or employee of the city**, or, the city of Staten Island, if applicable,** or any of the covered organizations, the mayor **or the mayor of the city of Staten Island, if applicable,** or the chief executive officer of such covered organization shall immediately report to the board all pertinent facts together with a statement of the action taken thereon.

§ 13-001. Section 25-a of the general city law is amended by adding a new undesignated paragraph to read as follows:

**For the purposes of this article, a city which is incorporated on or after the first of January next succeeding the date on which this paragraph shall have become a law and which is comprised of a geographical area which on the date immediately prior to such incorporation had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.**

§ 13-002. Section 25-w of the general city law is amended by adding a new subdivision (g) to read as follows:

(g) For the purposes of this article, a city which is incorporated on or after the first of January next succeeding the date on which this subdivision shall have become a law and which is comprised of a geographical area which on the date immediately prior to such incorporation had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.

§ 13-003. Section 1 of chapter 772 of the laws of 1966 relating to imposition of a city business tax is amended by adding a new undesignated paragraph to read as follows:

For the purposes of this section, a city which is incorporated on or after the first of January next succeeding the date on which this paragraph shall have become a law and which is comprised of a geographical area which on the date immediately prior to such incorporation had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.

§ 13-004. Section 2 of chapter 772 of the laws of 1966 relating to imposition of a city business tax is amended by adding a new undesignated paragraph to read as follows:

For the purposes of this section, a city which is incorporated on or after the first of January next succeeding the date on which this paragraph shall have become a law and which is comprised of a geographical area which on the date immediately prior to such incorporation had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.

§ 13-005. Section 1301 of the tax law is amended by adding a new subsection (f) to read as follows:

(f) For the purposes of this article, a city which is incorporated on or after the first of January next succeeding the date on which this subsection shall have become a law and which is comprised of a geographical area which on the date immediately prior to such incorporation had been wholly contained within a city with a population of one million or more shall continue to be treated as a city with a population of one million or more.

§ 14-001. The administrative code of the city of Staten Island is enacted to read as follows:

Title 6 - General Services and Contracting

§ 6-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of general services and contracting.

2. "Department" shall mean the department of general services and contracting.

§ 6-102 Commissioner. The head of the department shall be the commissioner.

§ 6-103 Powers and duties. The commissioner shall have the power and it shall be his or her duty to perform all the functions and operations of the city of Staten Island relating to the construction, maintenance and care of public buildings and facilities; the procurement of goods and other personal property; the disposition of surplus property; the providing to city agencies of services other than personal services; the acquisition, disposition and management by the city of real property other than housing; the providing of automotive, communication, energy and data processing services including without limitation:

1. Procurement of goods, other personal property and services. With respect to the procurement and disposal of goods and other personal property and the procurement of services other than personal services, the commissioner shall have the following power and duties:

(a) to purchase, inspect, store and distribute all goods, supplies, materials, equipment and other personal property required by any city agency, except as otherwise provided by law, or by any office of any county wholly included in the city for which supplies, materials or equipment are required, payment for which is made from the city treasury;

(b) to establish and maintain one or more city storehouses, operating therein a modern system of stores control to supply the estimated current needs of the agencies for which the commissioner is authorized to purchase. All purchases other than such purchases for stock for estimated needs and all deliveries from such stock shall be upon justified requisitions. The commissioner shall also oversee the establishment of efficient and economical systems of stores control in other city agencies and review the operations of such storehouses to assure their efficient and economical management;

(c) to receive all surplus and obsolete personal property not required by any agency for which the commissioner has the power to make purchases and all such agencies shall surrender such property to the commissioner who shall dispose thereof pursuant to rules promulgated by him or her governing its redistribution, exchange, transfer, sale or other disposition;

(d) to procure, supply and manage contractual services other than personal or professional services for the use of city agencies;

(e) to promulgate rules governing the purchase, payment, storage, and delivery of goods, supplies, materials and equipment by agencies of the city and the disposal of surplus and obsolete materials, and to supervise their enforcement; and

(f) to classify all goods, supplies, materials and equipment.

2. Energy; gas and electricity. The commissioner shall have charge and control of furnishing the city or any part thereof, by contract or otherwise, with gas, electricity, steam, hot water or other energy source, except such functions as are exercised by the public utility service of the city.

3. Data processing services; information technology and telecommunications. (a) For purposes of this title "telecommunications" shall mean transmission of writings, signals, pictures, numbers and sounds or intelligence of all kinds by and of wire, cable, optical fiber, radio, satellite, electromagnetic wave, microwave or other like connection between points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus and services incidental to such transmission.

(b) The commissioner shall provide data processing support, programming, and computer systems analysis services for city agencies when necessary or desirable, in accordance with executive orders promulgated by the mayor.

(c) In addition, the commissioner shall have further powers and duties:

(i) to plan, formulate, coordinate and advance information technology and telecommunications policy for the city;

(ii) to develop, maintain and implement a long range telecommunications strategy;

(iii) to administer, subject to the approval of the council where applicable, all franchises and revocable consents relating to telecommunications including without limitation, proposing authorizing resolutions for telecommunications, franchises, developing and issuing requests for proposals or other solicitations of proposals for telecommunications franchises, selecting telecommunications franchises, reviewing and approving petitions for revocable consents relating to telecommunications, negotiating the terms of contracts or other agreements relating to telecommunications franchises and revocable consents, enforcing the terms and conditions of such agreements;

(iv) to develop municipal uses of cable television and coordinate interagency uses of cable television and other telecommunications;

(v) to ensure that priority is given on at least one municipal channel to the cable casting of the public proceedings of the council and its committees, the city planning commission and other state and city agencies;

(vi) to provide to city agencies such land-based and wireless voice, data, video or other communication facilities, and technical assistance or other assistance with respect to such facilities, as they may require for the effective discharge of their responsibilities;

(vii) to participate in developing, maintaining and implementing a long-range computer system and data communications strategy for the city;

(viii) to assist in providing interagency coordination on matters related to data communications activities and interfacing of computers;

(ix) to provide appropriate, reliable, cost-effective and responsive computer and data communications services to agencies that require such services by purchasing and maintaining hardware, software and such other goods and services as may be necessary to effectively discharge the powers and duties of the department;

(x) to provide assistance to agencies in meeting their data processing and data communications objectives;

(xi) to provide agencies using or proposing to use the services of this department with technical assistance in determining feasibility and resource requirements;

(xii) to simplify access to shared information, reduce communication costs and provide access to multiple computer systems by connecting computers and terminals of various city agencies, and of other public entities requesting such connection where such provision to such other entities would in the judgment of the commissioner be in the city's interests;

(xiii) to plan and provide telecommunications coordination in support of disaster recovery;

(xiv) to ensure security for data and other information handled by this department;

(xv) to institute procedures to assure restrictions of access to information to the appropriate individuals, where such restrictions are required by law; and

(xvi) to perform such other responsibilities with respect to information technology and telecommunications matters, including responsibilities delegated elsewhere by the code, as the mayor shall direct.

4. Automotive services. The commissioner shall acquire by purchase, lease or otherwise, vehicles and other automotive equipment for the use of city agencies; manage, maintain, store and operate a fleet of motor vehicles; assign fleets to agencies in accordance with the direction of the mayor and ensure the effective operation of all shops, yards,

garages, fuel depots and other facilities required for the maintenance of fleets operated by agencies; and ensure the maintenance of records for all city owned vehicles.

5. Right of entry. The commissioner, officers and employees of the department may, in accordance with law, enter upon public or private property for the purpose of making surveys, borings or other investigations necessary for the exercise of powers or the performance of the duties of the commissioner and the department. Refusal to permit such entry shall be a misdemeanor punishable by not more than thirty days imprisonment or by a fine of not more than $50.00, or both.

§ 6-104 Emergency communications systems of other agencies. With respect to emergency communications systems and emergency communications facilities administered by another agency or another municipality, the department shall exercise its powers and duties only as the mayor shall direct or at the request of such agency.

§ 6-105 Records and information services. Within the department there shall be a division of records and information services which shall include, but not be limited to, municipal archives, a municipal reference and research center and a municipal records management division.

1. The division shall be responsible for the maintenance, access to and preservation of records of the city. In addition, the division shall develop and promulgate standards and procedures to effectively perform those duties.

The division shall provide appropriate information and assistance to the mayor and to members of the council. It shall also provide, within reasonable limits, access to the public to records, books and documents within its care and control.

2. The division is authorized to arrange for the exchange, sale, purchase and loan of information materials from and with legislative research services, libraries and institutions in other municipalities, governmental bodies and public authorities.

3. The division shall:

(a) provide for the distribution of publications of the city, where such authority is not vested in another city agency, and issue at regular intervals, no less than quarterly, a bulletin describing its facilities and resources;

(b) institute actions in replevin to recover any historical and/or other documents properly owned by, or originating from, the county of Richmond prior to the creation of the preceding municipality;

(c) report annually by the thirtieth of September to the mayor, and council on the powers and duties herein-mentioned including, but not limited to, the cost of savings effectuated by the division during the preceding fiscal year.

§ 6-106 Departmental libraries. The commissioner shall analyze the needs of each city agency, except the law department, with respect to the establishment and maintenance of any library or research facility therein, and make such recommendations as may be appropriate in the circumstances. Any libraries or research facilities so established shall, among any of its other duties, be responsible for the maintenance, access to and preservation of records within its care and control.

## Title 7 - Legal Affairs

§ 7-102 Department; corporation counsel. 1. There shall be a law department the head of which shall be the corporation counsel.

2. The first assistant corporation counsel, appointed by the corporation counsel, during absence, disability or the vacancy of the office

of the corporation counsel, shall assume all powers and perform all duties of the corporation counsel and shall act as corporation counsel until a new appointment is made.

3. The corporation counsel may empower, by written authority filed and remaining on record in the department, any of the assistants to perform certain duties of the corporation counsel.

§ 7-103 Powers and duties. The corporation counsel shall:

1. be attorney and counsel for the city and every agency thereof and shall have charge of and conduct all the law business of the city and its agencies;

2. have charge of and conduct the legal proceedings necessary in opening, widening, altering and closing streets and in acquiring real estate or in city condemnation proceedings;

3. have charge of and conduct the preparation of all leases, deeds, contracts, bonds and all other legal papers for the city or connected agency or officer thereof; and the corporation counsel shall approve the form of all such deeds, bonds, contracts, leases and legal papers;

4. have the right to institute actions in law or equity to maintain, defend and establish the rights, interests, revenues, property, privileges, franchises or demands of the city or the people thereof, and to collect any money, debts, fines or penalties or enforce the laws;

5. not be empowered to compromise, settle or adjust any rights, claims, demands or causes of action in favor of or against the city, to offer or confess judgment against the city or accept any offer of judgment in favor of the city without the approval of the comptroller; and

6. have the authority to assign one or more assistants to any agency; and the head of each agency may employ staff counsel to assist in legal affairs of the agency.

§ 7-104 Legal authority. 1. All actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city and not in that of any agency.

2. The mayor may delegate to any agency, after consultation with the corporation counsel and head of the agency, responsibility for the conduct of routine legal affairs of the agency.

3. The mayor may assign or transfer attorneys from the law department of the agency to assist in such delegated functions.

4. The corporation counsel shall monitor and evaluate on a regular basis the exercise of authority delegated.

5. The mayor, upon recommendation of the corporation counsel, may suspend or withdraw any delegated authority whenever in his or her judgment the interests of the city justify such action.

§ 7-105 City sheriff; powers and duties. 1. There shall be a city sheriff who shall be appointed by the mayor.

2. Except as otherwise provided by law, the functions, powers and duties formerly exercised by the sheriff of the preceding municipality as of the date of establishment of the city of Staten Island shall remain with the city sheriff.

§ 7-106 City clerk; powers and duties. The city clerk shall:

1. be the chief archivist of the city and shall advise the mayor and council on those matters concerning the preservation of the city's historical documentation;

2. act as the chief reference and research librarian for the mayor and council and shall ensure that all significant materials pertaining to operations of the city be preserved and readily available for use;

3. act as the chief public records officer for the mayor and council and shall, except as otherwise provided by law, establish standards for

the proper records management in any agency or government instrumentality funded in whole or in part from local tax levy monies; and

4. have the power formerly exercised or delegate any of the functions and duties vested in such city clerk by law of the preceding municipality as it existed on the date of establishment.

## Title 8 - Reserved

## Title 9 - Criminal Justice

### Chapter 1

### Department of Corrections

§ 9-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of corrections.

2. "Department" shall mean the department of corrections.

3. "Division" shall mean the division of juvenile justice.

§ 9-102 Commissioner. The head of the department shall be the commissioner of corrections.

§ 9-103 Powers and duties of commissioner. 1. The commissioner shall have:

a. charge and management of all institutions of the city (including all hospital wards) for the care and custody of felons; misdemeanants; all prisoners under arrest and waiting arraignment (including those who require hospital care and/or psychiatric observation or treatment); violators of ordinances or local laws and for the detention of any witnesses who are unable to furnish security for their appearance in criminal proceedings;

b. sole power and authority concerning the care, custody and control of all court pens for the detention of prisoners while in custody of the state of New York within the city of Staten Island, the family court of the state of New York, the supreme court in the county of Richmond and of all vehicles employed in the transportation of prisoners who have been sentenced, are awaiting trial or being held for other cause;

c. charge and management of persons or any other institution of the city placed under his or her jurisdiction;

d. all authority concerning the care and custody of felons, misdemeanants or violators of local laws held in institutions under his or her jurisdiction;

e. all authority in relation to the custody and transportation of persons held for any criminal proceedings, all prisoners under arrest and waiting arraignment (including those requiring hospital care and/or psychiatric treatment) in the city; and

f. supervision and responsibility for the planning and implementation of re-training, counseling, and rehabilitative programs for felons, misdemeanants and violators of local laws who are held in institutions under his or her charge.

2. The commissioner shall maintain and operate buildings and structures under his or her jurisdiction and may construct additions and make repairs to such buildings by use of the labor of persons under his or her care and custody.

§ 9-104 Labor of prisoners. 1. Every inmate of an institution under the authority of the commissioner shall be employed in some form of industry, farming operations or other employment and any products there-

of shall be utilized in the institutions under the commissioner's jurisdiction.

2. Any persons held for trial may be employed in the same manner as sentenced prisoners; however, such sentenced prisoners must give their consent in writing.

3. Inmates and/or prisoners held for trial may be detailed by the commissioner to perform work or service on the grounds, buildings, or on any public improvement under the charge of any other agency.

## Chapter 2

## Division of Juvenile Justice

§ 9-201 The division of juvenile justice; director. 1. There shall be within the department of corrections a division of juvenile justice.

2. The head of the division shall be the director of juvenile justice.

§ 9-202 Powers and duties of director. The director shall:

1. establish, initiate, control, maintain and operate secure and non-secure facilities for the temporary care and maintenance of children alleged to be or adjudicated as juvenile delinquents.

2. have the power to contract with other public and private agencies for services in order to ensure adequate, suitable and accessible accommodations and that proper care will be available when required for detention.

3. establish regulations for the operation of secure and non-secure detention facilities and shall provide or secure the availability of accessible and adequate non-secure detention facilities certified by the state division of youth.

4. develop, implement and maintain systems to collect, store and disseminate information concerning juvenile delinquency, juvenile crime and the juvenile justice system.

5. participate with other city agencies in development, implementation and maintenance of juvenile justice information.

# Title 10 - Reserved

# TITLE 11

# TAXATION AND FINANCE

## CHAPTER 1

## DEPARTMENT OF FINANCE

§ 11-001 Definitions and applicability. Any terms in this title referring to a governmental entity of the preceding municipality shall be deemed to refer to such entity of the preceding municipality or its successor entity under the city of Staten Island. Any action taken in compliance with the provisions of this title prior to the incorporation of the city of Staten Island shall be deemed to comply with the requirements of this title. For the purposes of this title, the term preceding municipality shall mean the city government for the geographical area of the city of Staten Island which existed immediately prior to the incorporation of the city of Staten Island.

§ 11-101 Power of department of finance to adopt a seal. The department of finance is authorized to adopt a seal.

§ 11-102 Finance department; records; copies when in evidence. A copy of any paper, record, book, document or map, filed in the department of finance, or the minutes, records or proceedings, or any portion thereof, of any board or commission of which the commissioner of finance, is or may become a member, when certified by the commissioner of finance, or a deputy commissioner of finance, to be a correct copy of

the original, shall be admissible in evidence in any trial, investigation, hearing or proceeding in any court, or before any commissioner, board or tribunal, with the same force and effect as the original. Whenever a subpoena is served upon the commissioner of finance, or any member of a board or commission of which the commissioner of finance is a member, or upon any officer or employee of the department of finance, or upon any officer or employee of such boards or commissions, requiring the production upon any trial or hearing of an original paper, document, book, map, record, minutes or proceedings, the commissioner of finance, in his or her discretion, may furnish a copy certified as herein provided, unless the subpoena be accompanied by an order of the court or other tribunal before which trial or hearing is had requiring the production of such original.

§ 11-102.1 Authorization to require identifying numbers. a. The commissioner of finance in the proper discharge of his or her duties in the administration and collection of taxes, assessments, arrears or other charges payable to the city may require any person to furnish such identifying number as the commissioner may prescribe for securing proper identification of such person including, but not limited to, a social security account number or federal employer identification number.

b. Any person who fails to supply such identifying number within thirty days after written demand therefor shall be liable for a civil penalty of not more than one thousand dollars. Upon application in writing and for good cause shown, the commissioner of finance may extend the time for compliance with such written demand.

c. The civil penalty prescribed by this section shall be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction. In addition, the corporation counsel may institute any other action or proceeding in any court of competent jurisdiction that may be appropriate or necessary for the enforcement of the provisions of this section.

§ 11-103 Bond of commissioner of finance. The commissioner of finance, within ten days after receiving notice of his or her appointment and before such commissioner enters upon his or her office, shall give a bond to the city and to the people of the state of New York in the sum of three hundred thousand dollars, with not less than four sufficient sureties to be approved by the comptroller, conditioned that he or she will faithfully discharge the duties of the commissioner's office and all trusts imposed on him or her by law in virtue of the commissioner's office, including all duties in connection with the tax on mortgages as prescribed by article eleven of the tax law. Such bond shall be deemed to extend to the faithful execution of the duties of the office until a new appointment shall be made and confirmed, and the person so appointed enters upon the performance of the commissioner's duties. In case of any official misconduct or default on the part of such commissioner of finance, or his or her subordinates, an action upon such bond may be begun and prosecuted to judgment by the city, which, after first paying therefrom the expenses of the litigation, shall cause the proceeds of such judgment to be distributed as shall be lawful and equitable among the persons and objects injured or defrauded by such official misconduct or default of the commissioner of finance or any of his or her subordinates.

§ 11-104 Commissioner of finance to keep accounts. a. The commissioner of finance shall keep books showing the receipts of moneys from all sources, and designating the sources of same, and also showing the

amounts paid from time to time on account of the several appropriations, the forms of which shall be prescribed by the comptroller.

b. The city collector or the deputy collector in receiving moneys payable to the city, from whatever source derived, shall not issue a receipt to the payor for a payment made by personal, business or corporate check unless specifically requested.

§ 11-105 Agreements with financing agencies or card issuers; payment of fines, civil penalties, taxes, fees, rates, rent, charges or other amounts by credit card. 1. As used in this section, the following terms shall have the following meanings:

a. "Card issuer" shall mean an issuer of a credit card, charge card or other value transfer device.

b. "Credit card" means any credit card, credit plate, charge card, charge plate, courtesy card, debit card or other identification card or device issued by a person to another person which may be used to obtain a cash advance or a loan or credit, or to purchase or lease property or services on the credit of the person issuing the credit card or a person who has agreed with the issuer to pay obligations arising from the use of a credit card issued another person.

c. "Financing agency" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers but shall not include a retail seller. The term includes but is not limited to a bank, trust company, private banker, industrial bank or investment company, if so engaged, but shall not include a retail seller.

d. "Person" means an individual, partnership, corporation or any other legal or commercial entity.

2. The city may enter into agreements with one or more financing agencies or card issuers to provide for the acceptance by the city of credit cards as an alternate means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city. Any such agreement shall govern the terms and conditions upon which a credit card proffered as a means of payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount shall be accepted or declined and the manner in and conditions upon which the financing agency or card issuer shall pay to the city the amount of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts paid by means of credit cards pursuant to such agreement. Any such agreement may provide for the payment by the city to such financing agency or card issuer of fees for the services rendered by such financing agency or card issuer pursuant to such agreement, which fees may consist of a discount deducted from or payable in respect of the amount of each such fine, civil penalty, tax, fee, rent, rate, charge or other amount or otherwise as the agreement may provide.

3. Notwithstanding any other provision of law to the contrary, any agency or department of the city which, pursuant to an agreement entered into under this section, accepts credit cards as a means of payment of fines, civil penalties, taxes, fees, rent, rates, charges or other amounts owed by a person to the city shall be authorized to charge and collect from any person offering a credit card as a means of payment of a fine a reasonable and uniform fee as a condition of accepting such credit card in payment of a fine, civil penalty, tax, fee, rent, rate, charge or other amount. Such fee shall not exceed the cost incurred by the agency or department in connection with such credit card trans-

action, which cost shall include any fee payable by the city to the financing agency.

§ 11-106 Weekly reports by commissioner of finance to mayor and comptroller. The commissioner of finance shall report weekly in writing to the mayor and to the comptroller all moneys received by the commissioner, the amount of all warrants paid by him or her since the commissioner's last report, and the amount remaining to the credit of the city.

§ 11-107 Report to comptroller. The commissioner of finance, when required by the comptroller, shall furnish to him or her such information as the comptroller may demand in relation to the finances of the city, within such reasonable time as the commissioner may direct.

§ 11-108 Rules in signing warrants. No warrant shall be signed by the comptroller or countersigned by the commissioner of finance, except upon vouchers for the expenditures of the amount named therein, duly prepared and audited according to the methods prescribed by the comptroller, and filed with the comptroller, except in the case of judgments, in which case a transcript thereof shall be filed.

§ 11-109 Commissioner of finance to exhibit bank book. The commissioner of finance shall exhibit his or her bank book to the comptroller on the first Tuesday of every month and more often when required.

§ 11-110 When commissioner of finance to close accounts. The accounts of the commissioner of finance shall be annually closed on the last day of June.

§ 11-111 Withdrawal of moneys by heads of agencies. Notwithstanding any provision of the charter, any city treasury or sinking fund moneys which have been duly withdrawn from any bank or trust company upon proper warrant and check to the order of the head or heads of any agency or agencies may be redeposited by such head or heads of such agency or agencies in a properly designated deposit bank and thereafter such redeposited moneys may be withdrawn upon check signed by him or her or them without additional warrant.

§ 11-112 Authorization of subordinates to sign checks and warrants. Notwithstanding any provision of the charter, the comptroller or commissioner of finance may designate and authorize any deputies, assistant deputies, or employees to sign, each in his or her own name and in place of and for the comptroller or commissioner of finance, respectively, any or all checks or warrants, including those issued against sinking fund and trust fund bank accounts. A warrant or check so signed shall be of the same force and effect as if signed by the comptroller or commissioner of finance, respectively. The designation or designations of deputies shall be made in writing in the manner set forth in section ninety-four of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. The designation or designations of assistant deputies or employees shall be in writing, signed in duplicate by the comptroller or the commissioner of finance, respectively, and shall be duly filed and remain of record in the office of the comptroller and the department of finance. The period for which each such designation of deputies, assistant deputies and employees shall continue in force shall be specified therein and may be terminated by the comptroller or commissioner of finance, respectively, at any time by filing in the same office or offices in which the designation has been filed a written notice of such termination signed by the comptroller or commissioner of finance, respectively.

§ 11-113 Acceptance of facsimile signatures by banks or trust companies. Notwithstanding any provision of the charter, checks drawn upon any bank or trust company for payment of payrolls or disbursements for

relief, required to be signed by the head of an agency or his or her authorized designee, may be signed by the facsimile signature or signatures of the person or persons authorized to sign such checks, if the head of such agency so authorizes by an instrument in writing signed by the head of such agency and filed with the comptroller; and, in such event, any bank or trust company shall, acting in good faith and without notice of any defect or invalidity, be authorized to pay and be protected in paying any checks bearing or purporting to bear the facsimile signature or signatures of the person or persons duly authorized to sign such checks, regardless of the person by whom or the means by which the actual or purported facsimile signature or signatures thereon may have been affixed thereto, if such facsimile signature or signatures closely resemble the facsimile specimens from time to time filed with such banks or trust companies by the head of the agency in question; provided, however, that nothing herein contained shall release such bank or trust company from any liability arising from any cause or fact other than the fact that such facsimile signature is not a genuine facsimile signature affixed with appropriate authority.

§ 11-115 City collector; appointment; bond. The mayor shall appoint the city collector. The city collector, before entering upon the duties of his or her office, shall enter into a bond to the city of Staten Island to be approved by the commissioner of finance and comptroller in the penal sum of twenty-five thousand dollars, which bond shall be conditioned for the faithful performance of the duties of the office by the officer giving such bond. Such bond shall be a lien on all the real estate held by the collector executing the same, or any surety thereto, in the city at the time of the filing thereof, unless there be named and described in or on any such bond, real estate in such city equal in value to the amount of such bond and owned by a surety, in which case the bond shall be a lien on such real estate so described and upon all the real estate of such city collector, and no other, and shall continue to be such lien until the condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied, or until such lien be released, not to exceed, however, the period of ten years after the time when the officer who has given such bond shall have ceased to hold his or her office, unless an action thereon has been commenced and shall then be pending.

§ 11-116 Deputies to give bond; duties. The city collector shall take from each deputy a bond, in such penal sum and with such sureties as may be approved by the city collector and by the comptroller and commissioner of finance, which bond shall run to the city collector, the city and to whom it may concern, and shall be conditioned for the faithful performance of the duties of such deputy. Each bond taken in pursuance of the provisions of this section shall be filed with the comptroller. Each deputy collector shall have all the powers and be subject to all the duties of the city collector in respect to the collection and receipt of taxes, assessments, water rents and arrears.

§ 11-117 Renewal of bond. If at any time during the continuance in office of the city collector or deputy collectors the comptroller or commissioner of finance shall deem any surety of them to be insufficient, he or she may require the city collector or deputy collectors to enter into a new bond to be approved in like manner as prescribed in section 11-115 of this chapter, within such time as the comptroller may direct, not being less than ten days after requiring such new bond to be given. In case of the neglect or refusal of any such officer to furnish

such bond within the time so directed, the comptroller or commissioner of finance may declare his or her office vacant.

§ 11-118 Bureau of city collections; duties. The duties of the bureau of city collections shall also include the collection of water rents, charges, fines and penalties in connection with the water supply, including arrears, sewer rents, sewer surcharges, charges, fines and penalties in connection with the sewer system as defined in sections 24-514 and 24-523 of the code of the preceding municipality, including arrears, interest on bonds and mortgages and revenue arising from the sale of property belonging to or managed by the city.

§ 11-119 City collector; absence; suspension of. a. In case of inability of the city collector to perform the duties of his or her office by reason of sickness or absence from the city, the mayor shall designate some suitable person to perform the duties of the city collector's office during such inability or absence, and shall, if the comptroller so requires, take from such person a bond, with sufficient sureties, in the manner hereinafter prescribed.

b. If the city collector or any deputy collector shall on any day omit or neglect to furnish to the commissioner of finance or to the comptroller, respectively, the statements and vouchers required in section 11-121 of this chapter, or to make the prescribed daily payments, it shall be the duty of the commissioner of finance forthwith to suspend him or her from office. In case of such suspension, the commissioner of finance shall appoint a suitable person to perform the duties of the officer so suspended, who shall continue to act as such officer until the person suspended shall be restored or another person shall have been appointed. On making such temporary appointment, the commissioner of finance shall be required to take from the person so appointed a bond, with two sufficient sureties, to be approved by the comptroller and filed with the comptroller, in such penal sum as the comptroller may deem just, conditioned for the faithful performance of the duties of the office during the continuance of the person appointed therein; and all the provisions of law prescribing the duties of the city collector and deputy collectors shall apply to the person or persons so appointed.

§ 11-120 Bond of city collector to be filed. The bond given by the city collector shall be filed and remain in the office of the comptroller, and true copies thereof, certified by the comptroller, shall be filed in the office of the clerk, and shall be public records. In case a certificate of the adjustment of the accounts of the city collector be made, a true copy thereof, certified by the comptroller, shall be filed in each of the offices in which a copy of the bond of the city collector shall have been filed.

§ 11-121 City collector; daily statements and accounts. a. The city collector or the deputy collector shall enter upon accounts, to be maintained in each such office for each parcel of property, the payment of taxes, assessments, sewer rents or water rents thereon, the amount therefor, and the date when paid. The city collector shall daily enter into suitable books to be kept for the purpose of such accounts, such payments and the respective parcels on account of which the same were paid.

b. At close of office hours each day, the city collector shall render to the commissioner of finance a statement of the sums so received, and at the same time pay over to such commissioner of finance, the amount received on such day. The city collector shall thereupon receive from such commissioner of finance a voucher for the payment of such sums

which he or she shall exhibit to the comptroller not later than the next succeeding business day.

c. At the close of office hours each day, the city collector shall also furnish a statement to the comptroller who shall file the same in his or her office. Such statement shall indicate in detail such sums so received and the respective parcels on account of which the same were paid. The comptroller shall, on each day, immediately after receiving such statement, compare it with a voucher furnished to him or her by the commissioner of finance indicating the sums which have been paid on such day to the commissioner of finance and if the aggregate amounts thereof shall correspond, shall credit the city collector in his or her books with such amount.

§ 11-122 Exemption from taxes granted to REMICs. An entity that is treated for federal income tax purposes as a real estate mortgage investment conduit, hereinafter referred to as a REMIC, as such term is defined in section 860D of the internal revenue code, shall be exempt from all taxation under chapters five and six of this title. A REMIC shall not be treated as a corporation, partnership or trust for purposes of chapter six of this title. The assets of a REMIC shall not be included in the calculation of any tax liability under chapter six. This provision does not exempt the holders of regular or residual interests, as defined in section 860G of the internal revenue code, in a REMIC from tax on or measured by such regular or residual interests, or on income from such interests.

§ 11-123 Interest compounded daily.

In computing the amount of any interest required to be paid under section 11-224 (except subdivision j thereof), 11-224.1, 11-264, 11-306, 11-307, 11-312, 11-313, 17-151, 19-152, 24-317, 24-512, 24-605, 26-128, 26-517.1, 27-2144 or 27-4029.1 of the code, such interest shall be compounded daily.

§ 11-124 Conciliation conferences. a. The commissioner of finance may establish a procedure for providing conciliation conferences for purposes of settling contested determinations of taxes or charges or denials of refunds or credits with respect to taxes or charges imposed under 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 for the purpose of settling disputes arising from the notification of the refusal to grant, the suspension or the revocation of a license issued pursuant to chapter thirteen of this title. If such a procedure is established, a conciliation conference shall be provided at the option of any taxpayer or any other person subject to the provisions of any of such chapters. For purposes of this subdivision, if the commissioner of finance fails to act with respect to a refund application before the expiration of the time period after which the taxpayer may file a petition for refund with 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 pursuant to subdivision (c) of section 11-529 or subdivision three of section 11-680 of the code, such failure shall be deemed to be the denial of a refund.

b. A request for a conciliation conference shall be made in the manner set forth in rules promulgated by the commissioner of finance and, notwithstanding any provision of law to the contrary, shall suspend the running of the period of limitations for the filing of a petition with such tax appeals tribunal under 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 until such time as a conciliation decision is rendered by the commissioner of finance, or until the person who requested the conciliation conference makes a written request to discontinue or withdraw from the conciliation proceeding.

c. Nothing contained herein shall prevent any taxpayer or any other person who has received a notice of determination, notice of deficiency or notice of denial of a claim for refund from filing a petition with such tax appeals tribunal if the time for filing such a petition has not elapsed.

d. The commissioner of finance is authorized and empowered to make, adopt and amend rules appropriate to the carrying out of this section and the purposes thereof.

§ 11-126 Definitions. When used in this title, the term "partnership" shall mean an entity classified as a partnership for federal income tax purposes, including a subchapter K limited liability company, and the term "partner" or the term "member" when used in relation to a partnership shall include a member of a subchapter K limited liability company, unless the context requires otherwise. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the state limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law. Notwithstanding anything herein to the contrary, this section shall not apply for purposes of chapter seventeen or nineteen of this title.

§ 11-128 Payment of real property taxes by electronic funds transfer. a. Definition. "Electronic funds transfer" shall mean any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account.

b. Authority. Notwithstanding any provision of law to the contrary, the department of finance may accept and, as authorized by this section, require payment of real property taxes by electronic funds transfer, and may authorize a designee to accept such payments. The department of finance, or its designee, may take all actions necessary to complete and administer such transactions, including but not limited to requesting and collecting necessary information and the debiting of specified accounts as provided for by this section.

c. Participation. Notwithstanding any provision of law to the contrary, the commissioner may require the payment of real property taxes by electronic funds transfer for properties with annual real property tax liability equal to or greater than three hundred thousand dollars. The owner of any such real property, or the person or entity authorized by such owner to pay real property taxes on such real property, shall be required to enroll in an electronic payment program to make such payments, including any arrears in real property taxes on such real property, by electronic funds transfer, either by payment initiated by the taxpayer as described in paragraph one of subdivision d of this section or by authorizing the department of finance to debit the rele-

vant account as described in paragraph two of subdivision d of this section.

1. Notwithstanding any other provision of this section, where a taxpayer pays real property taxes for more than one property by a single payment, and the total annual real property tax liability for such properties is equal to or greater than three hundred thousand dollars, the total annual real property tax liability for such properties shall be used to determine whether the taxes for a property must be paid by electronic funds transfer.

2. (i) Where real property taxes are paid for more than one taxpayer by a single bill or paid by a single entity, including but not limited to a mortgage escrow agent as defined in subparagraph (ii) of this paragraph, if the total amount paid is equal to or greater than three hundred thousand dollars annually, such amount shall be used to determine whether the taxpayer or entity is required to participate in an electronic funds transfer program.

(ii) For purposes of this paragraph, the term "mortgage escrow agent" shall include every banking organization, federal savings bank, federal savings and loan association, federal credit union, bank, trust company, licensed mortgage banker, savings bank, savings and loan association, credit union, insurance corporation organized under the laws of any state other than New York, or any other person, entity or organization which, in the regular course of its business, requires, maintains or services escrow accounts in connection with mortgages on real property located in the city.

d. Electronic payment program. The owner of real property, or other person or entity authorized by such owner to pay real property taxes on real property for which payment must be made by electronic funds transfer under this section, may choose between participating in a taxpayer initiated payment program or an automatic debit program, as set forth in this subdivision and described in rules promulgated by the commissioner of finance.

1. Taxpayer initiated program. In such a program, taxpayers initiate payment by electric funds transfer, including payment by fedwire.

2. Automatic debit program. In such a program, taxpayers authorize the department of finance, or the department's designee as determined by the commissioner of finance, to debit the taxpayer's account for the amounts due.

e. Notification of participation requirements. For taxpayers or entities subject to this section, the department of finance shall mail notice of such requirement to the property owner or other party who has been designated to receive real property tax bills on an owner's registration card filed by such owner. Such notice shall include the date by which the owner or other party designated by such owner to pay real property taxes on the property must enroll in the electronic payment program.

f. Authorization. To administer the payment of real property taxes by electronic funds transfer by automatic debit as described in paragraph two of subdivision d of this section, the department of finance may require that the party responsible for the payment of real property taxes:

1. execute an electronic funds transfer agreement with the department of finance or its designee, on a form approved by the department of finance. Such form may be in a format designated by the commissioner, including an electronic format. The agreement shall require that the taxpayer authorize the department of finance or its designee to debit

such account on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; and

2. furnish the department of finance or its designee with information to enable the department of finance to complete the electronic funds transfer transaction. Such information shall include, but not be limited to, the name and address of the bank from which an electronic funds transfer shall be authorized, the account number from which the payment shall be authorized, the American Bankers Association (ABA) routing number of the bank where the taxpayer maintains an account and the borough, block and lot of the real property for which such payments are authorized.

g. Timely payment. Notwithstanding any provision of law to the contrary, where real property taxes are required to be made by electronic funds transfer pursuant to subdivision c of this section, payment of real property tax by electronic funds transfer shall be deemed timely and not subject to interest charges if:

1. for taxpayers enrolled in a taxpayer initiated program pursuant to paragraph one of subdivision d of this section, (i) the taxpayer properly initiates payment on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; and (ii) on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law, such account contains sufficient funds to enable the successful completion of the electronic funds transfer; or

2. for taxpayers enrolled in an automatic debit program pursuant to paragraph two of subdivision d of this section, (i) the department of finance or its designee has been authorized to debit the taxpayer's account on the last date by which the real property taxes may be paid without the accrual of interest in accordance with applicable law; (ii) such account is properly identified; and (iii) on the date such payment is due, such account contains sufficient funds to enable the successful completion of the electronic funds transfer.

h. Charge on returned payments. Where the department of finance or its designee attempts to debit a taxpayer's account pursuant to a valid electronic funds transfer agreement and is unable to successfully complete the electronic funds transfer due to insufficient funds or other cause not attributable to the department of finance or its designee, in addition to any interest accruing from the late payment of taxes in accordance with applicable law, the same fee that is imposed for a dishonored check pursuant to section eighty-five of the general municipal law shall be imposed on the affected real property, and such fee may be collected in the manner provided in such section.

i. Hardship. If a taxpayer is unable to enroll in the electronic payment program required by subdivision c of this section or subsequent to enrollment becomes unable to make payments by electronic funds transfer as required by this section, the taxpayer may seek a waiver by written application to the department of finance that sets forth the reason for such inability. Such waiver may be granted in the discretion of the commissioner of finance, who may consider such criteria as:

1. the hardship, whether financial or practical, created by participation in the electronic funds transfer program for the taxpayer seeking the waiver;

2. the length of time for which the waiver is requested; and

3. any other factors that the commissioner may deem relevant.

The commissioner shall issue a determination, in writing, within ten days of the department of finance's receipt of a waiver request pursuant to this subdivision, but no waiver shall be granted with respect to the payment of any installment of real property taxes that is due within thirty days of the date of the request for a waiver.

j. Confidentiality. The department of finance shall assure the confidentiality of information supplied by taxpayers in effecting electronic funds transfers in accordance with applicable provisions of law. The provisions of article six of the public officers law shall not apply to any such information furnished by taxpayers subject to the requirements of this section.

k. Failure to pay by electronic funds transfer. 1. With respect to any real property as to which real property taxes are required to be paid by electronic funds transfer under this section, but for which an installment of real property taxes is not paid by electronic funds transfer and is paid instead by any other method, including payment by check, (i) with respect to the first installment that is paid by any other method, including payment by check, the department of finance shall mail a warning notice to the taxpayer setting forth the requirement to make payment by electronic funds transfer and the penalties for failure to do so; and (ii) with respect to each and every subsequent installment that is paid by any other method, including payment by check, the department of finance shall impose a penalty charge in the amount of one percent of the amount of the tax installment that was required under this section to be paid by electronic funds transfer.

2. Any penalty charge imposed under this subdivision shall be a lien against the real property for which the taxpayer failed to make a payment in the manner required by this section, and shall accrue interest at the same rate as is imposed on a delinquent tax on real property, to be calculated to the date of payment from the date of entry. Such lien shall be a tax lien within the meaning of sections 11-319 and 11-401 and may be sold, enforced or foreclosed in the manner provided in chapters three and four of this title.

l. Rules. The commissioner may promulgate rules necessary to implement this section.

## CHAPTER 2
## REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

### SUBCHAPTER 1
### ASSESSMENT ON REAL PROPERTY

§ 11-201 Assessments on real property; general powers of finance department. The commissioner of finance shall be charged generally with the duty and responsibility of assessing all real property subject to taxation within the city.

§ 11-202 Maps and records; surveyor. The commissioner of finance shall appoint a surveyor who shall make the necessary surveys and corrections of the block or ward maps, and also make all new tax maps which may be required.

§ 11-203 Maps and records; tax maps. a. As used in the charter of the city of Staten Island and in this code, the term "tax maps" shall mean and include the block map of taxes and assessments to the extent that the territory within the city of Staten Island is or shall be embraced in such map, such ward or land maps as embrace the remainder of such city, and also such maps as may be prepared under and pursuant to subdivision d of this section.

b. Each separately assessed parcel shall be indicated on the tax maps by a parcel number or by an identification number. A separate identification number shall be entered upon the tax maps in such manner as clearly to indicate each separately assessed parcel of real property not indicated by parcel numbering. Real property indicated by a single identification number shall be deemed to be a separately assessed parcel.

In the case of a newly created parcel with any building thereon, no tax lot number or identification number shall be assigned to such parcel unless the commissioner of the department of buildings has certified that the newly created parcel complies with all applicable zoning laws.

c. Parcel numbers shall designate each parcel by the use of three or more numbers, of which one shall be a section or ward number, another a block, district or plat number, and another a lot number. The department of finance may from time to time change the form of the section and blocks, and also the numbers thereof, on the tax maps filed in its office whenever such change of form has been caused pursuant to section one hundred ninety-nine of the charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section and there shall thereafter be delineated and entered upon such maps such new additional sections and blocks and their numbers as necessity may require. Such administration may from time to time change the form of the lots or parcels comprised within any block, and also the numbers thereof, and cause to be shown on such maps the separate lots or parcels of land contained in any new block added thereto and also the lot numbers thereof, according to the general plan employed in the making of such maps.

d. Each separately assessed parcel indicated by an identification number shall be shown by a description, or by inscription of such number on the block map of taxes and assessments, or by other map and description. Such numbers may be altered in the same manner as provided in subdivision c of this section for the alteration of parcel numbers.

e. New tax maps shall be certified by the department of finance and filed in its main office. All changes and alterations made in the tax maps shall be transmitted within thirty days after such change or alteration to such office.

§ 11-204 Tax maps; block references; alterations and corrections. The word "block", as used in this section designates a plot or parcel of land such as is commonly so designated in the city, wholly embraced within the continuous lines of streets, or streets and waterfront taken together where water forms one of the boundaries of a block, and such other parcels of land or land under water as may be indicated by the department of finance upon such tax maps by block numbers as constituting blocks.

§ 11-205 Maps and records; public inspection; evidential value. a. The books, maps, assessment-rolls, files and records of the department of finance shall be kept in such of the offices of the department of finance as may be most convenient to the taxpayers of the city and suitable to the proper discharge of the business of the department of finance. They shall be public records and shall at all reasonable times be open to public inspection.

b. Copies of all such records and transcripts thereof, certified by the commissioner of finance or an assessor or by an officer or employee of the department of finance designated by the commissioner of finance, and under the seal of the department of finance, shall be admissible in evidence in all courts and places in the same manner and for the same

purposes as books, papers or documents similarly authenticated by the clerk of a county.

§ 11-206 Power of the commissioner of finance to correct errors. The commissioner of finance may correct any assessment or tax which is erroneous due to a clerical error or to an error of description contained in the several books of annual record of assessed valuations, or in the assessments-rolls. If the taxes computed on such erroneous assessment have been paid, the commissioner of finance is authorized to refund or credit the difference between the taxes computed on the erroneous and corrected assessments.

§ 11-207 Duties of assessors in assessing property. a. In performing their assessment duties, the assessors shall personally examine each parcel of taxable real estate during at least every third assessment cycle, and shall personally examine each parcel of real estate that is not taxable during at least every fifth assessment cycle, as measured from the last preceding assessment cycle during which such parcel was personally examined, provided, however, the assessors shall revalue, reassess or update the assessment of each parcel of taxable or nontaxable real estate during each assessment cycle, irrespective of whether such parcel was personally examined during each assessment cycle.

b. The persons having charge of the assessment office shall furnish to the commissioner of finance, under oath, a detailed statement of all taxable real estate in the city. Such statement shall contain the street, the section or ward, the block and lot and map or identification numbers of such real estate embraced within such city; the sum for which, in their judgment, each separately assessed parcel of real estate would sell under ordinary circumstances if it were wholly unimproved and, separately stated, the sum for which the same parcel would sell under ordinary circumstances with the improvements, if any, thereon, such sums to be determined with regard to the limitations contained in the state real property tax law. Such statement shall include such other information as the commissioner of finance may, from time to time, require.

§ 11-208 Special right of entry; certificate of the commissioner of finance. A right of entry upon real property and into buildings and structures at all reasonable times to ascertain the character of the property shall not be allowed to any person acting in behalf of the department of finance, other than the officials mentioned in sections one hundred fifty-six and one thousand five hundred twenty-one of the charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section, unless a certificate therefor, executed in writing and signed by the commissioner of finance, is presented by such person to the owner, lessee, or occupant of the premises or his or her agent before entry thereon is made.

§ 11-208.1 Income and expense statements. a. Where real property is income-producing property, the owner shall be required to submit annually to the department not later than the first of September a statement of all income derived from and all expenses attributable to the operation of such property as follows:

(1) Where the owner's books and records reflecting the operation of the property are maintained on a calendar year basis, the statement shall be for the calendar year preceding the date the statement shall be filed.

(2) Where the owner's books and records reflecting the operation of the property are maintained on a fiscal year basis for federal income

tax purposes, the statement shall be for the last fiscal year concluded as of the first of August preceding the date the statement shall be filed.

(3) Notwithstanding the provisions of paragraphs one and two of this subdivision, where the owner of the property has not operated the property and is without knowledge of the income and expenses of the operation of the property for a consecutive twelve month period concluded as of the first of August preceding the date of the statement shall be filed, then the statement shall be for the period of ownership.

(4) The commissioner may for good cause shown extend the time for filing an income and expense statement by a period not to exceed thirty days.

b. Such statements shall contain the following declaration: "I certify that all information contained in this statement is true and correct to the best of my knowledge and belief. I understand that the willful making of any false statement of material fact herein will subject me to the provisions of law relevant to the making and filing of false instruments and will render this statement null and void."

c. The form on which such statement shall be submitted shall be prepared by the commissioner and copies of such form shall be made available at the offices of the department in the county in which the property is located. The commissioner may, by rule, require such statement to be submitted electronically in such form and such manner as the commissioner may determine. For good cause, the commissioner may waive any rule requiring electronic filing and may permit a statement to be filed in such other manner as the commissioner may designate.

d. (1) In the event that an owner of income-producing property fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in an amount not to exceed three percent of the assessed value of such income-producing property determined for the current fiscal year in accordance with section fifteen hundred six of the charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section provided, however, that if such statement is not filed by the thirty-first of December, the penalty shall be in an amount not to exceed four percent of such assessed value. If, in the year immediately following the year in which an owner fails to file by the thirty-first of December, the owner again fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing), such owner shall be subject to a penalty in an amount not to exceed five percent of the assessed value of such property determined for the current fiscal year. Such owner shall also be subject to a penalty of up to five percent of such assessed value in any year immediately succeeding a year in which a penalty of up to five percent could have been imposed, if in such succeeding year the owner fails to file an income and expense statement within the time prescribed in subdivision a of this section (determined with regard to any extension of time for filing). The penalties prescribed in this paragraph shall be determined by the commissioner after notice and an opportunity to be heard.

(2) The tax commission shall deny a hearing on any objection to the assessment of property for which an income and expense statement is required and has not been timely filed.

(3) Where an income and expense statement required under the provisions of this section has not been timely filed, the commissioner may compel by subpoena the production of the books and records of the owner relevant to the income and expenses of the property, and may also make application to any court of competent jurisdiction for an order compelling the owner to furnish the required income and expense statement.

e. As used in this section, the term "income-producing property" means property owned for the purpose of securing an income from the property itself, but shall not include property with an assessed value of forty thousand dollars or less, or residential property containing ten or fewer dwelling units or property classified in class one or two as defined in article eighteen of the real property tax law containing six or fewer dwelling units and one retail store.

f. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, the president or a commissioner or employee of the tax commission, any person engaged or retained by the department or the tax commission on an independent contract basis, or any person, who, pursuant to this section, is permitted to inspect any income and expense statement or to whom a copy, an abstract or a portion of any such statement is furnished, to divulge or make known in any manner except as provided in this subdivision, the amount of income and/or expense or any particulars set forth or disclosed in any such statement required under this section. The commissioner, the president of the tax commission, or any commissioner or officer or employee of the department or the tax commission charged with the custody of such statements shall not be required to produce any income and expense statement or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the department or the tax commission. Nothing herein shall be construed to prohibit the delivery to an owner or his or her duly authorized representative of a certified copy of any statement filed by such owner pursuant to this section or to prohibit the publication of statistics so classified as to prevent the identification of particular statements and the items thereof, or making known aggregate income and expense information disclosed with respect to property classified as class four as defined in article eighteen of the real property tax law without identifying information about individual leases, or making known a range as determined by the commissioner within which the income and expenses of a property classified as class two falls, or the inspection by the legal representatives of the department or of the tax commission of the statement of any owner who shall bring an action to correct the assessment. Any violation of the provisions of this subdivision shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the department or the tax commission, the offender shall be dismissed from office.

g. The commissioner shall be authorized to promulgate rules and regulations necessary to effectuate the purposes of this section.

h. Subdivision f of this section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

§ 11-209 Taxable status of building in course of construction. a. A building in the course of construction, commenced since the preceding fifth day of January and not ready for occupancy on the fifth day of

January following, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth of April.

b. (1) A commercial building in the course of construction, commenced since the fifth day of January one year preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

(2) A commercial building in the course of construction, commenced since the fifth day of January two years preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

(3) A commercial building in the course of construction, commenced since the fifth day of January three years preceding the taxable status date and not ready for occupancy or partially occupied on the taxable status date, shall not be assessed unless it shall be ready for occupancy or a part thereof shall be occupied prior to the fifteenth day of April following the taxable status date.

c. For purposes of this section, a "commercial building" shall mean a building that is intended to be used, and upon completion is used, exclusively for buying, selling or otherwise providing goods or services, or for other lawful business, commercial or manufacturing activities, excluding hotel services, except that a commercial building may contain a residential component other than a hotel, provided (i) that such residential component is receiving or has applied for and is eligible to receive a partial exemption from real property taxes pursuant to section four hundred twenty-one-a of the real property tax law, or (ii) that such residential component in its entirety, both land and building, is receiving or has applied for and is eligible to receive a full exemption from real property taxes, provided, however, a "commercial building" shall not include any building that is constructed on block 1049, lot 29 as shown on the tax map of the city of New York for the borough of Manhattan as such map was in effect for the assessment roll published in calendar year two thousand.

d. Subdivision b of this section shall not apply to a tax lot that constitutes a part of a building unless the building viewed as a whole is a commercial building as defined in subdivision c of this section.

e. Any building that receives the benefit conferred pursuant to subdivision b of this section that is subsequently determined not to have been a commercial building as defined in subdivision c of this section for any year in which it received such benefit shall have its assessment corrected for any such year. Taxes shall be imposed in the amount that would have applied had the corrected taxable assessed value appeared on the final assessment roll.

§ 11-210 Books of annual record of assessed valuation of real estate indicated by parcel numbers; form and contents. a. There shall be kept in the office of the department of finance, books of the annual record of the assessed valuation of real estate to be called "the annual record of the assessed valuation of real estate indicated by parcel numbers in the Staten Island", in which shall be entered in detail the assessed valuation of each separately assessed parcel indicated by a parcel number within the limits of Staten Island.

b. The assessed valuation of each such parcel shall be set down in such books in two columns. In the first column shall be stated, opposite each such parcel, the sum for which such parcel would sell under ordinary circumstances if wholly unimproved; and in the second column, the sum for which such parcel would sell under ordinary circumstances with the improvements, if any thereon.

c. Such books shall be prepared in such manner that the assessed valuations entered therein shall be under sections and block headings as may be most convenient for use in connection with the tax maps described in section 11-203 of this chapter.

§ 11-211 Books of annual record of assessed valuation of real estate indicated by identification numbers. a. The assessed valuation of all taxable real property indicated by identification numbers shall be entered in the office of the department of finance.

b. The assessors in the city shall furnish to the commissioner of finance at the office of the department of finance, a detailed statement under oath of the assessable real property indicated by an identification number in such city.

c. There shall be kept in the office of the department of finance, books of the annual record of the assessed valuation of real estate to be known as "the annual record of the assessed valuation of real estate indicated by identification numbers", in which shall be entered the assessed valuations of the real property mentioned in this section.

§ 11-212 Power of the commissioner of finance to equalize assessments before opening books. a. Before opening the several books of annual record of assessed valuation for public inspection, the commissioner of finance shall fix the valuations of property for the purpose of taxation throughout the city at such sums as will, in the commissioner's judgment, establish a just and equal relation between the valuations of property throughout the entire city.

b. To this end the assessors are required to transmit to the commissioner of finance in each year a report of the assessed valuation of real property at such time prior to the fifteenth of January as such commissioner may prescribe.

§ 11-213 Errors in annual records or assessment-rolls. The omission from the several books of annual record of assessed valuations or from the assessment-rolls in respect to the entry therein of the name of the rightful owner or owners of real estate, whether individuals or corporations, shall not invalidate any tax or assessment. In such case, however, no tax shall be collected except from the real estate so assessed.

§ 11-214 Procedure on apportionment of assessment. a. The commissioner of finance may apportion any assessment in such manner as he or she shall deem just and equitable, and forthwith cause such assessment to be cancelled and new assessments, equal in the aggregate to the cancelled assessment, to be made on the proper books and rolls. Within five days thereafter the commissioner of finance shall cause written notice of the new assessments to be mailed to the owners of record of the real estate so assessed at their last known residence or business address, and an affidavit of the mailing of such notice to be filed in the office of the department of finance.

b. When such notice is mailed after the first of February such owners may apply for correction of such assessments within twenty days after the mailing of such notice with the same force and effect as if such application were made on or before the first of March in such year.

§ 11-215 Entry of corrections made by tax commission. Upon receiving notice of a correction of an assessment made by the tax commission, the commissioner of finance shall cause the amount of the assessment as corrected to be entered upon the proper books of annual record and the assessment-rolls for the year for which such correction is made.

§ 11-216 Reduction in assessments; publication. a. There shall be published annually in the City Record a list of all reductions in real property assessments granted by the tax commission identifying the name of the property owner, the address and the amount of reduction.

b. No reduction shall be granted for an income-producing property unless there is submitted to the tax commission a statement of income and expenses in the form prescribed by the tax commission and which shall be, in the case of property valued at one million dollars or more certified by a certified public accountant. The commissioner granting such reduction in assessment shall state in a short memorandum the basis upon which the reduction is granted.

c. In all cases where the reduction in assessment for the current year is for fifty thousand dollars or more, the concurrence of the president of the tax commission shall be required.

§ 11-217 Assessment-rolls; form and contents. Assessment-rolls shall be so arranged with respect to number of columns and shall contain such entries as the commissioner of finance shall prescribe, sufficient to identify the property assessed and to show its total assessed valuation. Real estate shall be described therein by the numbers by which such property is designated on the tax maps and in the several books of the annual record of the assessed valuation of real estate, and such numbers shall import into the assessment-rolls any necessary identifying description shown by the tax maps.

§ 11-218 Assessment-rolls; delivery to council or city clerk. a. The council shall meet at noon, on the day of delivery of the rolls, other than a Saturday, Sunday, or legal holiday, at the city hall or usual place of meeting for the purpose of receiving the assessment-rolls and performing such other duties in relation thereto as are prescribed by law.

b. If the council fails to meet as herein prescribed, the rolls shall be delivered to the city clerk with the same effect as if delivered to the council.

§ 11-219 Books of annual record; delivery for publication. Within two weeks after the delivery of the assessment-rolls to the council, the commissioner of finance shall furnish to the director of the City Record a copy of the several books of the annual record of the assessed valuation of real estate, omitting, however, the two columns headed respectively "size of house" and "houses on lot."

§ 11-220 Council; date of meeting to fix tax rate. The council shall meet on a day other than a Saturday, Sunday or legal holiday, to fix the annual tax rate.

§ 11-221 Extension of tax on assessment-rolls or upon assessment-roll cards. The respective sums to be paid as taxes on the valuation of real property, may be set down in the assessment-rolls, or upon assessment-roll cards.

§ 11-222 Tax account of the commissioner of finance. Upon notification from the public advocate of the amount of taxes mentioned in such assessment-rolls and tax warrants, the comptroller shall cause the proper sum to be charged to the commissioner of finance for collection.

§ 11-223 Apportionment of taxes. a. If a sum of money in gross has been or shall be taxed upon any lands or premises, any person or persons

claiming any dividend or undivided part thereof may pay such part of such sum so taxed and of any interest and charges due or charged thereon, as the commissioner of finance may deem to be just and equitable.

b. The commissioner of finance shall apportion the assessed valuation of such lands or premises.

c. The remainder of the sum of money so taxed and the interest and charges shall be a lien upon the residue of the land and premises only, and the tax lien upon such residue may be sold to satisfy such tax, interest or charges thereon, in the same manner as though the residue of said tax had been imposed only upon such residue of such lands or premises.

§ 11-224 Interest on unpaid taxes. a. If any tax on real estate which shall have become due and payable prior to January first, nineteen hundred thirty-four, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of seven per centum per annum from the date when such tax or such part thereof became due and payable to January first, nineteen hundred thirty-four, at the rate of ten per centum per annum from January first, nineteen hundred thirty-four to May first, nineteen hundred thirty-seven, or at the rate of seven per centum per annum for such period if the comptroller and the commissioner of finance, in their discretion, both determine that the payment of any tax arrears at such reduced rate of interest may operate to save the property upon which such taxes are in arrears from foreclosure or encourage its development or is otherwise in the public interest, at the rate of seven per centum per annum from May first, nineteen hundred thirty-seven to August first, nineteen hundred sixty-nine, and from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

b. If any tax on real estate which shall have become due and payable after January first, nineteen hundred thirty-four and prior to April first, nineteen hundred thirty-seven, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of ten per centum per annum from the date on which such tax or such part thereof became due and payable to May first, nineteen hundred thirty-seven, or at the rate of seven per centum per annum for such period if the comptroller and the commissioner of finance, in their discretion, both determine that the payment of any tax arrears at such reduced rate of interest may operate to save the property upon which such taxes are in arrears from foreclosure or encourage its development or is otherwise in the public interest, at the rate of seven per centum per annum from May first, nineteen hundred thirty-seven to August first, nineteen hundred sixty-nine, from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax

on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

c. If any tax on real estate which shall have become due and payable on or after April first, nineteen hundred thirty-seven and prior to August first, nineteen hundred sixty-nine is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated to the date of payment at the rate of seven per centum per annum from the day on which such tax or such part thereof became due and payable to August first, nineteen hundred sixty-nine, from August first, nineteen hundred sixty-nine to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

d. If any tax on real estate which shall have become due and payable on or after August first, nineteen hundred sixty-nine and prior to December thirty-first, nineteen hundred seventy-six, is unpaid in whole or in part, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof, to be calculated from the date on which such tax or such part thereof became due and payable to December thirty-first, nineteen hundred seventy-six, at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of one per centum per month if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land, and from January first, nineteen hundred seventy-seven at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

e. If any tax on real estate which shall become due and payable at any time on or after January first, nineteen hundred seventy-seven, shall remain unpaid in whole or in part on the fifteenth day following the date on which the same shall become due and payable, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid on that date, to be calculated from the day on which such tax or such part thereof became due and payable to the date of payment at the rate of seven per centum per annum if the annual tax on a parcel is two thousand dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a

parcel is more than two thousand dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land.

f. If any tax on real estate which shall become due and payable at any time on or after July first, nineteen hundred seventy-nine, shall remain unpaid in whole or in part on the fifteenth day following the date on which the same shall become due and payable, or if any tax on real estate which became due and payable prior to July first, nineteen hundred seventy-nine shall remain unpaid on that date, the commissioner of finance shall charge, receive and collect interest upon the amount of such tax or such part thereof remaining unpaid, to be calculated, in the case of any tax which shall become due and payable on or after July first, nineteen hundred seventy-nine, from the day on which such tax or such part thereof became due and payable, and in the case of any tax which became due and payable prior to July first, nineteen hundred seventy-nine, from July first, nineteen hundred seventy-nine, to the date of payment at the rate of seven per centum per annum if the annual tax on a parcel is two thousand seven hundred fifty dollars or less, and at the rate of fifteen per centum per annum if the annual tax on a parcel is more than two thousand seven hundred fifty dollars or, irrespective of the annual tax, if a parcel consists of vacant or unimproved land. Any interest accrued prior to July first, nineteen hundred seventy-nine, pursuant to subdivisions a through e of this section shall be unaffected by the provisions of this subdivision.

g. No later than the twenty-fifth day of May of each year, the banking commission shall transmit a written recommendation to the council of a proposed interest rate to be charged for nonpayment of taxes on real estate in those cases where the annual tax on a parcel is more than two thousand seven hundred fifty dollars or where, irrespective of the annual tax, a parcel consists of vacant or unimproved land. In making such recommendations the commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and shall propose a rate of at least six per centum per annum greater than such rates. The council may by resolution adopt an interest rate to be applicable to the aforementioned parcels and may specify in such resolution the date on which such interest rate is to take effect.

h. Notwithstanding anything to the contrary contained in the recommendation transmitted by the banking commission to the council relative to the proposed rate of interest to be charged during the fiscal year of the city commencing July first, nineteen hundred seventy-nine in the case of nonpayment of real estate taxes, or contained in the resolution adopted by the council in accordance with such recommendation, the council hereby sets the interest rate to be charged during the fiscal year of the city commencing July first, nineteen hundred seventy-nine for nonpayment of real estate taxes at eighteen per centum per annum where the annual tax on a parcel is more than two thousand seven hundred fifty dollars or where the parcel consists of vacant or unimproved land.

i. The interest mentioned in subdivisions a through h of this section shall be paid over and accounted for from time to time by such commissioner of finance as a part of the tax collected by him or her.

j. When an installment agreement has been entered into pursuant to any of the provisions of chapter four of this title, during the period beginning on the date this subdivision takes effect and ending April thirtieth, nineteen hundred eighty-two, the commissioner of finance shall, notwithstanding any higher rate of interest prescribed pursuant to applicable law, and unless a lower rate of interest is applicable to

a parcel covered by such an agreement, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of ten percent per annum from May first, nineteen hundred eighty-two to the date of payment of each installment. Any interest accrued or accruing prior to May first, nineteen hundred eighty-two shall not be affected by the provisions of this subdivision but shall be charged, collected and received in the manner and at the rates prescribed pursuant to applicable law. Such ten percent rate of interest shall be applicable only if, as of May first, nineteen hundred eighty-two, (i) there has been no default in such agreement, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. Where an installment agreement has been entered into prior to May fifth, nineteen hundred eighty-two pursuant to the provisions of either paragraph three of subdivision a of section 11-413 of chapter four of this title prior to March fourteenth, nineteen hundred seventy-nine or of subdivision a of section 11-405 or subdivision h of section 11-409 of chapter four of this title and said agreement is current as to both installment payments and current taxes, assessments and other legal charges, the commissioner of finance, on application of the party who entered into such agreement, may cancel said agreement and enter into a new agreement containing the terms provided on May fifth, nineteen hundred eighty-two. If any such prior agreement is not cancelled as herein provided, any installments due and payable under such agreement on or after May first, nineteen hundred eighty-two shall be subject to interest at the rate and under the conditions set forth above. In the event of any subsequent default or failure to make timely payment of any installment payment or current tax, assessment or other legal charge, the ten percent rate of interest specified in this subdivision shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates prescribed pursuant to applicable law.

k. 1. Notwithstanding any other provision of this section to the contrary, but subject to the exception contained in paragraph two of this subdivision, in the case of an installment of tax on real property described in paragraph b of subdivision four of section fifteen hundred nineteen of the city charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section, interest shall be charged, received and collected at the rate established pursuant to this section if such installment shall remain unpaid in whole or in part on the date on which it shall become due and payable.

2. If the tax rate for any fiscal year of the city has not been set by the fifteenth of June preceding the start of such fiscal year, interest shall not be charged, received and collected with respect to the first installment of tax which is due and payable on the first of July in such fiscal year if such installment is paid on or before the extended payment date. For this purpose, the term "extended payment date" means the date which falls the same number of days after the first of July in such fiscal year as the number of days the date such tax rate is set falls after such fifteenth of June.

l. No later than the fifth day following the effective date of this subdivision and no later than May twenty-fifth of each succeeding year, the banking commission shall transmit a written recommendation to the council of proposed interest rates to be charged for nonpayment of taxes on real property in those cases in which the annual tax on a parcel,

other than a parcel which consists of vacant or unimproved land, is not more than two thousand seven hundred fifty dollars. In making such recommendations, the banking commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city. In the case of any such parcel with respect to which the real property taxes are held in escrow and paid to the commissioner of finance by a "mortgage escrow agent," as that term is defined in section fifteen hundred nineteen of the city charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section, the proposed rate shall be at least six percent per annum greater than such prevailing prime rate, and in the case of all other such parcels, the proposed rate shall be at least equal to such prevailing prime rate. The council may by resolution adopt interest rates to be applicable to the aforementioned parcels and may specify in such resolution the dates on which such interest rates are to take effect. In the event the council does not adopt interest rates as provided in this subdivision, the interest rates otherwise specified in this section shall be applicable.

§ 11-224.1 Interest on unpaid real property tax.

(a) For real property with an assessed value of eighty thousand dollars or less, if an installment of tax due and payable is not paid by July fifteenth, October fifteenth, January fifteenth or April fifteenth, interest shall be imposed on such unpaid amounts.

(b) For real property with an assessed value of over eighty thousand dollars, if an installment of tax due and payable is not paid by July first or January first, interest shall be imposed on such unpaid amounts.

(c) If the council does not adopt interest rates by July first, two thousand twenty-five, the rates shall be (i) for real property with an assessed value of eighty thousand dollars or less, seven percent per annum; and (ii) for real property with an assessed value of over eighty thousand dollars, fifteen percent per annum.

(d) (i) Any tax or part of a tax that became due before July first, two thousand five and remains unpaid after June thirtieth, two thousand twenty-five, shall continue to accrue interest until paid at the rate applicable under this section.

(ii) This section shall not apply to interest accrued before July first, two thousand twenty-five.

(e) By May twenty-fifth of each year, the banking commission shall send a written recommendation to the council of a proposed interest rate to be charged for nonpayment of taxes on real property. The commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and:

(i) for real property with an assessed value of eighty thousand dollars or less, shall propose a rate at least equal to such prevailing prime rate;

(ii) for real property with an assessed value of over eighty thousand dollars, shall propose a rate of at least six percent per annum greater than such prevailing prime rate.

The council may by resolution adopt interest rates to be applicable to the aforementioned properties and may specify in such resolution the date that such rates will take effect.

(f) If the tax rate for any fiscal year of the city is not set by the fifteenth of June preceding the start of such fiscal year, interest shall not be charged for the first installment of tax which is due on

the first day of July in such fiscal year if such installment is paid on or before the extended payment date. For this purpose, the term "extended payment date" means the date which falls the same number of days after the first day of July in such fiscal year as the number of days the date such tax rate is set falls after such fifteenth day of June.

(g) For purposes of this section, property held in the cooperative form of ownership shall not be deemed to have an assessed value of over eighty thousand dollars if the property's assessed value divided by the number of residential dwelling units is eighty thousand dollars or less per unit.

§ 11-225 Power of tax commission to remit or reduce taxes. The tax commission shall have power to remit or reduce a tax imposed upon real property where lawful cause therefor is shown or where such tax is found to be excessive or otherwise erroneous, but such remission or reduction shall be made only with respect to an assessment for which an application for correction has been made pursuant to section one hundred sixty-three of the charter, and no such remission or reduction shall be made when a claim to correct the assessment or recover the tax would be barred by passage of time or other adequate defense, or when, at the time that the determination is rendered, applications for correction or other proceedings are pending to review the assessment of such property for more than one subsequent fiscal year, provided, however, the tax commission shall have no power to remit or reduce a tax pursuant to this section more than five years after the last day on which an application for correction could have been filed to appeal the unlawful or erroneous assessment upon which such tax was based. If such tax shall have been paid the commissioner of finance is authorized to refund or credit the amount of any such remission or reduction granted pursuant to this section. When the correction results from an application for correction made by the board of managers of a condominium, a refund may be paid to the board of managers for distribution to the individual unit owners with the consent of such board and on such conditions as the commissioner deems appropriate.

§ 11-226 Special right of entry; certificate of president. A right of entry upon real property and into buildings and structures at all reasonable times to ascertain the character of the property shall not be allowed to any person acting in behalf of the tax commission, other than the officials mentioned in sections one hundred fifty-six and fifteen hundred twenty-one of the charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section, unless a certificate therefor, executed in writing and signed by the president of the tax commission, is presented by such person to the owner, lessee or occupant of the premises or his agent before entry thereon is made.

§ 11-227 Duties of authorized employees in examining applicants. a. Employees of the tax commission, when authorized to take testimony on application, shall reduce such testimony to writing.

b. Within ten days after the evidence on any application is taken, they shall transmit the application and testimony so taken, with their recommendation, to the tax commission at its main office or such other office as the commission may prescribe.

§ 11-228 Testimony taken on application to constitute part of record. All written testimony taken by the tax commission, by a commissioner, or by an employee of the commission authorized to take testimony on appli-

cations, shall constitute part of the record of the proceedings upon any assessment.

§ 11-229 Solicitation of retainers prohibited. It shall be unlawful for any person or his or her or its agents or employee, or any person acting on his or her or its behalf, to solicit, or procure through solicitation, either directly or indirectly, any retainer or agreement:

(a) Authorizing such person, or his or her or its agent, employee or any person acting on his or her or its behalf, to make application to the commissioner of finance or tax commission for the correction of a tentative or final assessed valuation of real property on behalf of an owner of such property or other person claiming to be aggrieved, or

(b) Authorizing such person, or his or her or its agent, employee or any person acting on his or her or its behalf, to appear for such purpose or represent such owner or aggrieved person before such commission or a commissioner or any other officer or employee authorized by law to act upon such application, examine applicants, take testimony, make or recommend the making of a correction of any such assessed valuation, or take any other official action in relation to any such correction. Any violation of this section shall be a misdemeanor.

§ 11-230 Issuance of final determination; limitation of time. Except as otherwise provided in section one hundred sixty-five of the charter of the preceding municipality as it existed on the first of January in the year next succeeding the effective date of this section, the final determination of the tax commission upon any application for the correction of an assessment and upon the evidence taken thereunder shall, where the evidence is taken by the commission or by a commissioner, be rendered within thirty days after the hearing of such application is closed. Where the evidence is taken by an employee of the tax commission authorized to take testimony on applications, the final determination shall be rendered within thirty days after the application and the testimony hereon shall have been filed with the commission at its main office.

Immediately upon making a correction of an assessment, the tax commission shall notify the commissioner of finance thereof.

§ 11-231 Proceeding to review tax assessment; contents of petition. a. Any person or corporation claiming to be aggrieved by the assessed valuation of real property may commence a proceeding to review or correct on the merits a final determination of the tax commission by serving on the president of the tax commission, or his or her duly authorized agent, a copy of a verified petition as prescribed by law. No such petition shall be accepted unless, prior to the service thereof, an index number has been obtained from the county clerk. Within ten days after a proceeding has been commenced as hereinbefore provided, the original verified petition with proof of service shall be filed in the office of the clerk of the court in which the proceeding is to be heard.

b. Such review shall be allowed only on one or more of the following grounds, which must be specified in such petition:

1. That the assessment is illegal, and stating the particulars of the alleged illegality, or

2. That the assessment is erroneous by reason of over-valuation, or

3. That the assessment is erroneous by reason of inequality, in that it has been made at a higher proportionate valuation than the assessment of other real property on the assessment rolls of the city for the same year, and for assessments made after December thirty-first, nineteen hundred eighty-one, other real property within the same class as defined in section eighteen hundred two of the real property tax law, specifying

the instances in which such inequality exists and the extent thereof, and stating that the petitioner is or will be injured thereby, or

4. That the real property is misclassified, and stating the class in which it is claimed the property should be classified.

c. The proceeding shall be maintained against the tax commission either by naming the president and the commissioners of the tax commission individually, or by naming the tax commission of the city of Staten Island generally.

d. Such proceeding to review and all proceedings thereunder shall be brought at a special term of the supreme court in the judicial district where the real property so assessed is situated.

e. The justice or referee before whom such proceeding shall be heard may inspect the real property which is the subject of the proceeding.

§ 11-232 Comptroller; rates of interest on taxes and assessments. The comptroller shall not reduce the rate of interest upon any taxes or assessments below the amount fixed by law.

§ 11-233 Cancellation of unpaid taxes. When it shall appear to the comptroller that the unpaid taxes or assessments, or both, together with the interest and penalties thereon which may have been levied upon a parcel of real estate subject to easements which were in existence prior to the levying of such taxes or assessments, equal or exceed the sum for which, under ordinary circumstances, such parcel of real estate would sell subject to such easements, the comptroller, with the written approval of the corporation counsel, may settle and adjust such unpaid taxes or assessments, or both, with the interest and penalties thereon, and when it shall appear to the comptroller that such parcel of real estate would sell under ordinary circumstances subject to such easements for only a nominal sum, then the comptroller with the written approval of the corporation counsel may cancel such unpaid taxes and assessments together with the interest and penalties thereon.

§ 11-235 Board of estimate; power to cancel taxes, assessments and water rents. The board of estimate, upon the written certificate of the comptroller approving the same, with whom application for relief under this section shall be filed, in its discretion and upon such terms as it may deem proper, by unanimous vote, may cancel and annul all taxes, assessments and water rents and sales to the city of any or all of the same which now are or may hereafter become a lien against any real estate owned by any corporation, entitled to exemption of such real estate owned by it from local taxation under the provisions of the real property tax law formerly contained in subdivision six of section four of the tax law, provided that all taxes and water rents from which relief is asked be apportioned as of the date such corporation took title to such real estate, and that such taxes and water rents so apportioned to the period before such date, and all assessments which became a lien before such date, be paid. The commissioner of finance shall mark the city's books and rolls of taxes, assessments and water rents in accordance with the determination of the board of estimate in every case in which action shall be taken under the provisions of this section.

§ 11-236 Powers of board of estimate to cancel taxes, water rents and assessments. The council by local law may authorize the board of estimate, by a unanimous vote, upon the written consent of the comptroller, to cancel and annul any taxes, water rents and assessments constituting a lien against any real property owned by a corporation whose property is exempt from taxation under the provisions of the real property tax law, notwithstanding that such taxes, water rents or assessments shall have become a lien against such real property while owned by a person or

corporation not exempt under such section. The commissioner of finance shall mark the city's books and rolls of taxes and assessments in accordance with the determination of the board of estimate under such local law.

§ 11-237 Cancellation of assessments, water and sewer rents on real property acquired by tax enforcement foreclosure proceedings. Upon the cancellation of unpaid assessments, water and sewer rents by the city collector pursuant to section 11-353 of this title, the comptroller shall charge the unpaid amounts for assessments for local improvements, so cancelled, to the surplus in the appropriate assessment fund; the unpaid amounts for water charges, meter setting and repair, meter glasses and sewer rents, so cancelled, shall be deducted from the accounts receivable of the appropriate fund.

§ 11-238 Real property tax surcharge on absentee landlords. a. Imposition of surcharge. A real property tax surcharge is hereby imposed on class one property, as defined in section eighteen hundred two of the real property tax law, excluding vacant land, that provides rental income and is not the primary residence of the owner or owners of such class one property, or the primary residence of the parent or child of such owner or owners, in an amount equal to zero percent of the net real property taxes for fiscal years beginning on or after the first of July in the second year next succeeding the effective date of this section. As used in this section, "net real property tax" means the real property tax assessed on class one property after deduction for any exemption or abatement received pursuant to the real property tax law or this title.

b. Rental income, primary residence and/or relationship to owner or owners. The property shall be deemed to be the primary residence of the owner or owners thereof, if such property would be eligible to receive the real property tax exemption pursuant to section four hundred twenty-five of the real property tax law, regardless of whether such owner or owners has filed an application for, or the property is currently receiving, such exemption. Proof of primary residence and the resident's or residents' relationship to the owner or owners and the absence of rental income shall be in the form of a certification as required by the rules of the commissioner.

c. Rules. The department of finance shall have, in addition to any other functions, powers and duties which have been or may be conferred on it by law, the power to make and promulgate rules to carry out the purposes of this section, including, but not limited to, rules related to the timing, form and manner of any certification required to be submitted under this section.

d. Penalties. 1. Notwithstanding any provision of any general, special or local law to the contrary, an owner or owners shall be personally liable for any taxes owed pursuant to this section whenever such owner or owners fail to comply with this section or the rules promulgated hereunder, or makes a false or misleading statement or omission and the commissioner determines that such act was due to the owner or owners' willful neglect, or that under such circumstances such act constituted a fraud on the department. The remedy provided herein for an action in person shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by general, special or local law.

2. If the commissioner should determine, within three years from the filing of an application or certification pursuant to this section, that there was a material misstatement on such application or certification,

he or she shall impose a penalty tax against the property of five hundred dollars, in accordance with the rules promulgated hereunder.

e. Cessation of use. In the event that a property granted an exemption from taxation pursuant to this section ceases to be used as the primary residence of such owner or owners or his, her or their parent or child, or produces rental income, such owner or owners shall so notify the commissioner.

## SUBCHAPTER 2
## EXEMPTIONS FROM REAL PROPERTY TAXATION
### PART 1
### EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

§ 11-241 Discrimination in tax exempt projects. No exemption from taxation, for any project, other than a project hitherto agreed upon or contracted for, shall be granted to a housing company, insurance company, redevelopment company or redevelopment corporation, which shall directly or indirectly, refuse, withhold from, or deny to any person any of the dwelling or business accommodations in such project or property, or the privileges and services incident to occupancy thereof, on account of the race, color or creed of any such person.

Any exemption from taxation hereafter granted shall terminate sixty days after a finding by the supreme court of the state of New York that such discrimination is being or has been practiced in such project or property; if within sixty days such discrimination shall have been ended, then the exemption shall not terminate.

§ 11-242 Exemption and tax abatement in regard to improvements of substandard dwellings. a. As used in this section, the following terms shall have the following meanings: 1. "Alteration" and "improvement": a physical change in an existing dwelling other than painting, ordinary repairs, normal replacements or maintenance items.

2. "Existing dwelling": a class A multiple dwelling in existence prior to the commencement of alterations for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year nineteen hundred fifty-five--nineteen hundred fifty-six.

3. "Start" on alteration or improvement: begin any physical operation undertaken for the purpose of making alterations or improvements to an existing dwelling.

4. "Complete" an alteration or improvement: conclude or terminate any physical operation such as is referred to in subparagraph three of this paragraph, to an extent or degree which renders such building capable of use for the purpose for which the improvements or alterations were intended.

5. "Multiple dwelling": multiple dwellings as that term is defined in section four of the multiple dwelling law.

b. Any increase in assessed valuation resulting from alterations and improvements to existing dwellings to eliminate presently existing unhealthy or dangerous conditions in any existing dwelling or to replace inadequate and obsolete sanitary facilities in any such dwelling, any of which represent fire or health hazards, or to provide central or other appropriate and approved heating, except insofar as the gross cubic content of the building is increased thereby, shall be exempt from taxation for local purposes for a period of twelve years after the taxable status date immediately following the completion of the alterations and improvements, to the extent that such increase in assessed valuation result from the reasonable cost of such alterations and improvements, providing that construction is started after March first, nineteen

hundred fifty-five and completed before December thirty-first, nineteen hundred fifty-nine. The assessed valuation allocated to such dwelling after such alterations and improvements during such period of twelve years, exclusive of the increase in valuation which is exempted, shall not exceed the valuation of the previously existing dwelling appearing on the assessment rolls after the taxable status date immediately preceding the commencement of such alterations and improvements. The assessed valuation of the land occupied by such dwelling and any increase in valuation resulting from alterations and improvements other than those made pursuant to this section, shall not be affected by the provisions of this section.

c. The taxes upon any such property, including the land, shall be abated and reduced by an amount equal to eight and one-third per centum of the reasonable cost of such alterations and improvements each year for a period of nine years commencing with the first tax bill for the first tax year in which the exemption herein provided is effective, but such abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such period.

d. The department of buildings shall determine and certify the reasonable cost of any such alterations and improvements and for that purpose may adopt rules and regulations, administer oaths to and take testimony of any person, including but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such books, papers or other documents as the department shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such alterations and improvements, may establish maximum allowable costs for specified units, fixtures or work in such alterations or improvements, and may require the submission of plans and specifications of such alteration and improvements before the start thereof. Application forms for the benefits of this section shall be filed with the tax commission between February first and March fifteenth and the tax commission shall certify to the city collector the amount of taxes to be abated and reduced, pursuant to the certification of the commissioner of buildings as herein provided. No such application shall be accepted unless accompanied by copies of certificates of the city planning commission and the commissioner of buildings, as provided in this subdivision and in subdivision e of this section.

e. To the end that alterations and improvements in such property shall interfere as little as practicable with urgently needed public improvements, and the clearance and rebuilding of substandard and insanitary areas, and shall be confined to multiple dwellings which are structurally sound, comply with applicable provisions of law, and are provided with adequate central or other appropriate and approved heating exemption or abatement from taxation hereunder shall be restricted to dwellings which: (1) the city planning commission certify will not unduly interfere with projected public improvements or the clearance and rebuilding of substandard and insanitary areas which certification shall be evidenced by a certificate describing the property involved and shall be issued upon application to such city planning commission in such manner and in such form as may be prescribed by such city planning commission, and (2) which the department of buildings shall certify to be structurally sound, comply with applicable provisions of law and provide central or other appropriate and approved heating, which certification shall be evidenced by a certificate describing the property involved and shall be issued upon application to the department of buildings in such manner and in such form as may be prescribed by such

department. Where the improvements and alterations include or benefit that part of a building which is occupied by stores or used for commercial purposes, the cost shall be apportioned so that the benefits of this section shall not be provided for the cost of the improvements or alterations made for store or commercial purposes.

f. Notwithstanding the provisions of the multiple dwelling law, or any local law, ordinance, provisions of this code, rule or regulation, any dwelling to which alterations and improvements are made pursuant to this section and which did not require a certificate of occupancy on April second, nineteen hundred forty-five, may be occupied lawfully after such date upon the completion of such alterations and improvements without such a certificate being obtained, provided, however, that such alterations and improvements shall have been made in conformity with law and the applicable provisions for fire protection required by articles six and seven of the multiple dwelling law.

g. No owner of a dwelling to which the benefits of this section shall be applied nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, or religion any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein.

h. Each agency to which functions are assigned by this section may adopt rules and regulations for the effectuation of the purposes of this section, and a copy, for each member of the council, of such rules and regulations shall be filed with the clerk of the council prior to promulgation.

i. Any person who shall knowingly and wilfully make any false statement as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both.

j. The benefits of this section shall not apply to any multiple dwelling which is not subject to the provisions of the emergency housing rent control law or its successor statute for the city of Staten Island, provided that this subdivision shall not operate to rescind any benefits granted by the tax commission under this section prior to July first, nineteen hundred fifty-eight; and further provided that where the benefits herein provided were or are granted by the tax commission on or after July first, nineteen hundred fifty-eight to any multiple dwelling which is decontrolled subsequent to the granting of such benefits, the tax commission shall withdraw such benefits, effective upon the commencement of the first tax year following the tax year in which such multiple dwelling is decontrolled.

§ 11-243 Reextension of exemption and tax abatement in regard to improvements of substandard dwellings. a. As used in this section, the following terms shall have the following meanings:

1. "Alteration" and "improvement": a physical change in an existing dwelling other than painting, ordinary repairs, normal replacement of maintenance items, provided, however, that ordinary repairs and normal replacement of maintenance items, as defined by rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, shall be eligible for tax exemption and tax abatement under this section provided that repairs and maintenance items:

(1) were started and completed within a twelve-month period,

(2) were made to any common area of the dwelling premises concurrently with a major capital improvement thereto, as defined by rules adopted by

the department of housing preservation and development pursuant to subdivision m of this section,

(3) require the issuance of a permit for at least one item thereof by any city agency, and

(4) the amount of money expended thereon shall not exceed two times the amount expended on the major capital improvement performed concurrently therewith.

"Alteration" and "improvement" shall also mean "an abatement" of lead-based paint hazards, as defined in part 745 of title forty of the code of federal regulations or any successor regulations in any existing dwelling including any common areas, and shall include an "inspection" and "risk assessment" for lead-based paint hazards, as defined in such part, in a dwelling unit whether such unit is vacant or occupied but shall not include any work performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the administrative code of the city of New York. For purposes of this paragraph, the term, "targeted area" shall mean the geographical area of New York city that is determined by the department of health and mental hygiene to have high rates of children with environmental intervention blood lead levels. The department of housing preservation and development shall establish two schedules of certified reasonable costs for items that are included in an abatement of lead-based paint hazards, one covering such abatement that is performed in an eligible dwelling unit or common area located in the targeted area, and one covering such abatement that is performed in an eligible dwelling unit or common area that is not located in the targeted area. The first such schedules shall be promulgated by the department of housing preservation and development within 180 days of the effective date of this section and shall be used for any such abatements that are commenced on or after August 2, 2004. Such schedules shall be reviewed by such department biennially following their effective dates and amended as necessary. Notwithstanding any other provision of law or rule, an owner who performs an abatement of lead-based paint hazards pursuant to this paragraph shall not be required to comply with subdivision y of this section which provides for filing of a notice of intent form prior to the commencement of work, and no additional fee or penalty shall be due and owing the department at the time of issuance of a certificate of eligibility and reasonable cost for failure to file such notice of intent.

2. "Existing dwelling": except as hereinafter provided in subdivision d of this section, a class A multiple dwelling or a building consisting of one or two dwelling units over space used for commercial occupancy in existence prior to the commencement of alterations for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year immediately preceding the commencement of such alterations and improvements.

3. "Start" an alteration or improvement: begin any physical operation undertaken for the purpose of making alterations or improvements to an existing dwelling.

4. "Complete" an alteration or improvement: conclude or terminate any physical operation such as is referred to in paragraph three of this subdivision, to an extent or degree which renders such building capable of use for the purpose for which the improvements or alterations were intended.

5. "Multiple dwelling": multiple dwellings as that term is defined in section four of the multiple dwelling law.

6. "Moderate rehabilitation": shall mean a scope of work which

(a) includes a building-wide replacement of a major component of one of the following systems:

(1) Elevator

(2) Heating

(3) Plumbing

(4) Wiring

(5) Window; and

(b) has a certified reasonable cost of not less than twenty-five hundred dollars, exclusive of any certified reasonable cost for ordinary repairs, for each dwelling unit in existence at the commencement of the rehabilitation; except that the department of housing preservation and development may establish a minimum certified reasonable cost to be greater than twenty-five hundred dollars per dwelling unit pursuant to subdivision m of this section.

7. "Substantially occupied": shall mean an occupancy of not less than sixty percent of all dwelling units immediately prior and during rehabilitation, except that the department of housing preservation and development may establish higher percentages of occupancy pursuant to subdivision m of this section.

8. "Private dwelling" shall mean any building or structure designed and occupied for residential purposes by not more than two families. Private dwellings shall also be deemed to include a series of one-family or two-family dwelling units each of which faces or is accessible to a legal street or public thoroughfare, if each such dwelling unit is equipped as a separate dwelling unit with all essential services, and if each such unit is arranged so that it may be approved as a legal one-family or two-family dwelling.

b. Subject to the limitations provided in subdivision d of this section and the restrictions in this section on conversion of buildings used in whole or in part for single room occupancy, any increase in the assessed valuation of real property shall be exempt from taxation for local purposes to the extent such increase results from the reasonable cost of: (1) the conversion of a class B multiple dwelling to a class A multiple dwelling except insofar as the gross cubic content of such building is increased thereby; or (2) the conversion of any nonresidential building or structure situated in the county of Richmond to a class A multiple dwelling except insofar as the gross cubic content of such building or structure is increased thereby; or (3) alterations or improvements to the exterior of an otherwise eligible building or structure visible from a public street pursuant to a permit issued by the landmarks commission with respect to a designated historic or landmark site or structure; or (4) alterations or improvements constituting a moderate rehabilitation of a substantially occupied class A multiple dwelling except insofar as the gross cubic content of such building or structure is increased thereby; or (5) alterations or improvements to an otherwise eligible building or structure commenced after January first, nineteen hundred eighty designed to conserve the use of fuel, electricity or other energy sources or to reduce demand for electricity, including the installation of meters for purposes of measuring the amount of electricity consumed for each dwelling unit, and conversions of direct metering to a system that includes a master meter and submeters in any cooperative, condominium, or housing development fund company organized under article eleven of the private housing finance law; or (6) alter-

ations or improvements to existing dwellings to eliminate existing unhealthy or dangerous conditions in any such existing dwelling or replace inadequate and obsolete sanitary facilities in any such existing dwelling, any of which represents fire or health hazards, including as improvements asbestos abatement to the extent such asbestos abatement is required by federal, state or local law, except insofar as the gross cubic content of such existing dwelling is increased thereby; or (7) conversion of residential units qualified for the protection of article seven-C of the multiple dwelling law in buildings or portions thereof registered with the New York city loft board as interim multiple dwellings pursuant to such article to units which are in compliance with the standards of safety and fire protection set forth in article seven-B of the multiple dwelling law or to units which have a certificate of occupancy as class A multiple dwellings; or (8) alterations or improvements commenced on or after September first, nineteen hundred eighty-seven constituting a substantial rehabilitation of a class A multiple dwelling, or a conversion of a building or structure into a class A multiple dwelling, as part of a program to provide housing for low and moderate income households as defined by the department of housing preservation and development pursuant to the rules and regulations promulgated pursuant to subdivision m of this section, provided that such alterations or improvements or conversions shall be aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality, including, in the discretion of the department of housing preservation and development, a subsidy in the form of a below market sale from the city of New York; or (9) alterations or improvements to any private dwelling or conversion of any private dwelling to a multiple dwelling or conversion of any multiple dwelling to a private dwelling, provided that such alterations, improvements or conversions are part of a project that has applied for or is receiving benefits pursuant to this section and shall be aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality. Such conversions, alterations or improvements shall be completed within thirty-six months after the date on which same shall be started except that such thirty-six month limitation shall not apply to conversions of residential units which are registered with the loft board in accordance with article seven-C of the multiple dwelling law pursuant to paragraph eight of this subdivision. Provided, however, a sixty-month period for completion shall be available for alterations or improvements undertaken by a housing development fund company organized pursuant to article eleven of the private housing finance law, which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from the city of New York or the city of Staten Island if alterations and improvements are completed within seven years after the date of transfer. In addition, the department of housing preservation and development may grant an extension of the period of completion for any project carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality, if such alterations, improvements or conversions are completed within sixty months from commencement of construction. Provided, further, that such conversions, alterations or improvements shall in any event be completed prior to the thirty-first of December in the third year next succeeding the effective date of this section. Exemption for conversions, alterations or improvements pursuant to paragraph one, two, three, four, six, seven, eight or ten of this subdivision shall continue

for a period not to exceed fourteen years and begin no sooner than the first tax period immediately following the completion of such conversions, alterations or improvements. Exemption for alterations or improvements pursuant to paragraph five or nine of this subdivision shall continue for a period not to exceed thirty-four years and shall begin no sooner than the first tax period immediately following the completion of such alterations or improvements. Such exemption shall be equal to the increase in the valuation, which is subject to exemption in full or proportionally under this subdivision for ten or thirty years, whichever is applicable. After such period of time, the amount of such exempted assessed valuation of such improvements shall be reduced by twenty percent in each succeeding year until the assessed value of the improvements is fully taxable. Provided, however, exemption for any conversions, alterations or improvements, which are aided by a loan or grant under article eight, eight-A, eleven, twelve, fifteen, or twenty-two of the private housing finance law, section six hundred ninety-six-a or section ninety-nine-h of the general municipal law, or section three hundred twelve of the housing act of nineteen hundred sixty-four (42 U.S.C.A. 1452b), or the Cranston-Gonzalez national affordable housing act, (42 U.S.C.A. 12701 et. seq.), or started after July first, nineteen hundred eighty-three by a housing development fund company organized pursuant to article eleven of the private housing finance law which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from the city of New York and where alterations and improvements are completed within seven years after the date of transfer may commence at the beginning of any tax period subsequent to the start of such conversions, alterations or improvements and prior to the completion of such conversions, alterations or improvements. The assessed valuation of the land occupied by such dwelling and any increase in assessed valuation resulting from conversions, alterations, or improvements other than those made pursuant to this section shall not be affected by the provisions of this section.

b-1. Notwithstanding the provisions of subdivision b of this section, alterations, improvements or conversions of any building or structure that are eligible for benefits pursuant to subdivision b of this section except insofar as the gross cubic content of such building or structure is increased thereby shall be eligible for such benefits insofar as the gross cubic content of such building or structure is increased thereby provided that:

(1) for all tax lots now existing or hereafter created, at least fifty percent of the floor area of the completed building or structure consists of the pre-existing building or structure that was converted, altered or improved in accordance with subdivision b of this section, and

(2) for tax lots now existing or hereafter created within the following area in the borough of Manhattan, such conversions, alterations or improvements are aided by a grant, loan or subsidy from any federal, state or local agency or instrumentality: beginning at the intersection of the United States pierhead line in the Hudson river and the center line of Chambers street extended, thence easterly to the center line of Chambers street and continuing along the center line of Chambers street to the center line of Centre street, thence southerly along the center line of Centre street to the center line of the Brooklyn Bridge to the intersection of the Brooklyn Bridge and the United States pierhead line in the East river, thence northerly along the United States pierhead

line in the East river to the intersection of the United States pierhead line in the East river and the center line of one hundred tenth street extended, thence westerly to the center line of one hundred tenth street and continuing along the center line of one hundred tenth street to its westerly terminus, thence westerly to the intersection of the center line of one hundred tenth street extended and the United States pierhead line in the Hudson river, thence southerly along the United States pierhead line in the Hudson river to the point of beginning.

(3) For purposes of this subdivision, "floor area" shall mean the horizontal areas of the several floors or any portion thereof of a dwelling or dwellings and accessory structures on a lot measured from the exterior faces of exterior walls or from the center line of party walls.

(4) Nothing in this subdivision shall be construed to provide tax abatement benefits pursuant to subdivision c of this section for the costs attributable to the increased cubic content in any such building or structure.

c. (1) Except as provided in paragraphs two, three and four of this subdivision, the taxes upon any real property, including the land, may be abated each year for a period of not more than twenty years by an amount no greater than eight and one-third per centum of the reasonable cost of eligible conversions, alterations or improvements provided in paragraphs one through eight and paragraph ten of subdivision b of this section provided that the abatement in taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period; and provided further that alterations or improvements pursuant to paragraph four of subdivision b of this section shall only receive the benefits of this section if construction commenced after January first, nineteen hundred seventy-eight and that in no event shall the aggregate abatement exceed ninety per centum of the reasonable cost of conversions, alterations or improvements provided in paragraphs one, three, four, six, seven, and ten of subdivision b of this section, or exceed fifty per centum of the reasonable cost of conversions pursuant to paragraph one of subdivision b of this section if construction commenced after January first, nineteen hundred eighty-two or exceed fifty per centum of the reasonable cost of conversions pursuant to paragraphs two and eight of subdivision b of this section, or exceed one hundred per centum of the reasonable cost of alterations or improvements pursuant to paragraph five of subdivision b of this section provided that where alterations or improvements pursuant to paragraphs four and six of subdivision b of this section are done in conjunction with a conversion pursuant to paragraph two of subdivision b of this section, the aggregate abatement shall not exceed fifty per centum of the reasonable cost. Notwithstanding the foregoing, the taxes upon real property, including the land may be abated for a period of not more than twenty years at eight and one-third per centum of the reasonable cost of conversions where construction actually commenced in good faith prior to July first, nineteen hundred eighty pursuant to an alteration permit issued by the department of buildings prior to July first, nineteen hundred eighty provided that the aggregate abatement shall not exceed ninety per centum of the reasonable cost thereof and provided further that in no event shall the abatement in taxes in any twelve-month period exceed the amount of taxes payable in such twelve-month period. In no event, however, shall the aggregate abatement for conversions, alterations or improvements pursuant to subdivision b of this section exceed such dollar limit per existing class A dwelling unit or

additional unit created by conversion to a class A multiple dwelling as may be established pursuant to rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section. Only those items of work set forth in the itemized cost breakdown schedule contained in rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section shall be eligible for tax abatement. Such abatement shall commence on the later of July first, nineteen hundred seventy-eight or the first day of the first tax quarter following the completion of such construction and the filing for benefits as provided in subdivision h of this section except that such period of abatement may commence on the later of the first day of the first tax quarter following commencement of any conversion, alteration or improvement or (i) July first, nineteen hundred seventy-six, if aided by a loan pursuant to article eight of the private housing finance law and completed after December thirty-first, nineteen hundred seventy-five; or (ii) July first, nineteen hundred seventy-seven, if aided by a loan pursuant to article fifteen of the private housing finance law; or (iii) July first, nineteen hundred eighty, if aided by a loan pursuant to article eight-A of the private housing finance law; or (iv) July first, nineteen hundred eighty, if aided by a loan pursuant to section three hundred twelve of the housing act of nineteen hundred sixty-four (42 U.S.C.A. §1452b); or (v) July first, nineteen hundred ninety-two, if started after such date and aided by a loan or grant under article eleven, twelve, or twenty-two of the private housing finance law, section six hundred ninety-six-a or section ninety-nine-h of the general municipal law, or the Cranston-Gonzalez national affordable housing act (42 U.S.C.A. 12701 et seq.); or (vi) July first, nineteen hundred eighty-eight, if started after such date by or on behalf of a company not qualified under any of the above provisions, which is a not-for-profit corporation qualified pursuant to section 501(c)(3) of the internal revenue code and which has entered into a regulatory agreement with the local housing agency requiring operation of the property as housing for low and moderate income persons and families.

(2) In the case of alterations or improvements pursuant to paragraph five of subdivision b of this section which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing or financed with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency or pursuant to a program established by the federal housing administration for rehabilitation of existing multiple dwellings in a neighborhood strategy area as defined by the United States department of housing and urban development, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period.

(3) In the case of alterations or improvements carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing, or financed with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency or pursuant to a program established by the federal housing administration for rehabilitation of existing multiple dwellings in a neighborhood strategy area as defined by the United States department of housing and urban development where such alterations or improvements are done on property located in census tracts in which seventy-five percent or more of the population live in households which earn fifty percent or less of the median household income of the city, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period.

(4) In the case of alterations, improvements or conversions pursuant to paragraph eight of subdivision b of this section, the abatement of taxes on such property, including the land, shall not exceed the lesser of the actual cost of the alterations or improvements or one hundred fifty per centum of the certified reasonable cost of the alterations or improvements, as determined under regulations of the department of housing preservation and development, and the annual abatement of taxes shall not exceed twelve and one-half per centum of such certified reasonable cost, provided that such abatement shall not be effective for more than twenty years and the annual abatement of taxes in any consecutive twelve-month period shall in no event exceed the amount of taxes payable in such twelve-month period.

d. The benefits of this section shall apply:

(1) to any multiple dwelling which is altered, improved or increased in valuation with aid of a loan provided by the city of New York or the city of Staten Island, the New York city housing development corporation or the United States department of housing and urban development for the elimination of conditions dangerous to human life or detrimental to health, including nuisances as defined in section three hundred nine of the multiple dwelling law, or other rehabilitation or improvement whether or not all of the units thereof were in existence prior to rehabilitation pursuant to the provisions of: (i) article two, eight or eight-A of the private housing finance law provided that such dwelling is made available solely to persons or families of low income as defined in said articles, (ii) article twelve of the private housing finance law, (iii) article fifteen of the private housing finance law or (iv) any federal law where the multiple dwelling is supervised or regulated by the United States department of housing and urban development.

(2) except as hereinafter provided, to any building or structure which is converted to a class A multiple dwelling or to any existing dwelling which is substantially rehabilitated, and further provided that the rents subsequent to conversion or substantial rehabilitation shall not exceed such amount as may be fixed: (i) by the United States department

of housing and urban development, (ii) pursuant to the private housing finance law of the state of New York, or (iii) pursuant to chapter three or chapter four of title twenty-six of the code of the preceding municipality, provided that the initial legal regulated rent for the dwelling units shall be the rent charged and paid by the initial tenant and registered with the New York state division of housing and community renewal. Buildings or structures which are converted to class A multiple dwellings and existing dwellings which are substantially rehabilitated shall contain bedrooms in a number equal to at least fifty percent of the apartments created where an alteration permit has been issued by the department of buildings prior to April first, nineteen hundred eighty and seventy-five percent of the apartments created where an alteration permit has been issued by the department of buildings on or after April first, nineteen hundred eighty provided, however, that if a building or structure is converted from a non-residential use to a class A multiple dwelling and the units therein contain an average floor area of one thousand square feet, such requirement as to the number of bedrooms shall not be applicable and if an existing dwelling is substantially rehabilitated, the seventy-five percent bedroom requirement shall be reduced to the extent its application would necessitate a reduction in the number of units which are contained in the existing dwelling prior to commencement of substantial rehabilitation.

(3) to any multiple dwelling, building or structure otherwise eligible for any of the benefits of this section which:

(i) is operated exclusively for the benefit of persons or families who are or will be entitled to occupancy by reason of ownership of stock or membership in the corporate owner, or for the benefit of such persons or families and other persons or families entitled to occupancy under applicable provisions of law without ownership of stock or membership in the corporate owner, or (ii) is owned as a condominium and is occupied as the residence or home of three or more families living independently of each other; provided, however, that, in addition to all other conditions of eligibility for the benefits of this section, except for multiple dwellings in which units have been newly created by substantial rehabilitation of vacant buildings or conversions of non-residential buildings, the availability of benefits under this section for such multiple dwellings, buildings or structures shall be conditioned on the following: (a) alterations or improvements to at least one building-wide system are part of the application for benefits, and (b) (i) the assessed valuation of such multiple dwelling, building, or structure, including land, shall not exceed an average of thirty thousand dollars per dwelling unit at the time of the commencement of the alterations or improvements, and (ii) during the three years immediately preceding the commencement of the alterations or improvements the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent of the maximum mortgage amount for a single family home eligible for purchase by the Federal National Mortgage Association; provided that if less than ten percent of the dwelling units or an amount of stock less than the amount allocable to ten percent of such dwelling units was not transferred during such preceding three year period, eligibility for benefits shall be conditioned upon the multiple dwelling, building, or structure having an assessed valuation per dwelling unit of no more than twenty-five thousand dollars at the time of the commencement of the alterations or improvements. Provided, further, that such benefits shall be available

only for alterations or improvements commenced on or after June first, nineteen hundred eighty-six.

Notwithstanding the foregoing, the benefits of this section shall be available for any alterations or improvements commenced after August seventh, two thousand eight for such multiple dwellings, buildings or structures and shall be conditioned on the following: (1) the application for benefits may include any item of work designated in the rules adopted by the department of housing preservation and development as a major capital improvement or asbestos abatement to the extent such asbestos abatement is required by federal, state and local law; and (2) (i) the assessed valuation of such multiple dwelling, building or structure, including land, shall not exceed an average of forty thousand dollars per dwelling unit at the time of the commencement of the alterations or improvements; and (ii) the average per room sale price of the dwelling units or the stock allocated to such dwelling units shall have been no greater than thirty-five percent of the maximum mortgage amount for a single family home eligible for purchase by the Federal National Mortgage Association during the three years immediately preceding the commencement of the alterations or improvements; provided that if less than ten percent of the dwelling units or an amount of stock less than the amount allocable to ten percent of such dwelling units was not transferred during such preceding three-year period, eligibility for benefits shall be conditioned upon the multiple dwelling, building, or structure having an assessed valuation per dwelling unit of no more than forty thousand dollars at the time of the commencement of the alteration or improvement. Provided, however, benefits shall also be available under this section for work completed in any such multiple dwelling, building or structure within the first three years of its conversion to cooperative or condominium ownership, as evidenced by the date on which the first closing in a condominium to a bona fide purchaser occurs or in the case of a cooperative, the date on which the shares allocable to a unit are conveyed to a bona fide purchaser, provided, however, that the availability of such benefits for conversions, alterations or improvements commenced prior to June first, nineteen hundred eighty-six, except with respect to governmentally assisted projects as defined in regulations issued by the department of housing preservation and development, shall be conditioned upon the completion of such conversions, alterations or improvements within three years after acceptance for filing of the prospectus to establish such cooperative or condominium entity by the attorney general of the state of New York. The maximum amount of tax abatement which may be received in any tax period under this section by any such multiple dwelling, building or structure for any alterations and improvements commenced three or more years after its initial conversion to cooperative or condominium ownership shall be limited to an amount not in excess of two thousand five hundred dollars per dwelling unit of the certified reasonable cost of the alterations or improvements as determined under regulations of the department of housing preservation and development.

(3-a) Notwithstanding any contrary provision of paragraph three of this subdivision, the availability of any benefits under this section to any multiple dwelling, building or structure owned and operated by a limited-profit housing company established pursuant to article two of the private housing finance law shall not be conditioned upon the assessed valuation of such multiple dwelling, building or structure, including land, as calculated as an average dollar amount per dwelling unit, at the time of the commencement of the alterations or improve-

ments; provided, however, that such limited-profit housing company (i) is organized and operating as a mutual company, (ii) continues to be organized and operating as a mutual company and to own and operate the multiple dwelling, building or structure receiving such benefits, and (iii) has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such limited-profit housing company pursuant to section thirty-five of the private housing finance law for not less than fifteen years from the commencement of such benefits. For the purposes of this paragraph, the terms "mutual company" and "supervising agency" shall have the same meanings as set forth in section two of the private housing finance law.

(4) provided that, in the case of any building or structure: (i) in which conversion, alteration or improvement commences on or after January first, nineteen hundred eighty-two, and (ii) which is located within an area designated herein as a minimum tax zone, the benefits of this section shall not be applied to abate or reduce the taxes upon the land portion of such real property, which shall continue to be taxed based upon the assessed valuation of the land and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation with respect to abatement of taxes shall not apply:

(A) to any multiple dwelling which is eligible for benefits based upon moderate rehabilitation pursuant to paragraph four of subdivision b of this section, or (B) to any multiple dwelling which is governmentally assisted as such term is defined in regulations to be promulgated by the department of housing preservation and development pursuant to subdivision m of this section.

(5) provided that, in the case of any building or structure: (i) in which conversion, alteration or improvement commences on or after January first, nineteen hundred eighty-two, and (ii) which is located within an area designated herein as a tax abatement exclusion zone, the benefits of this section shall not be applied to abate or reduce the taxes upon such real property, which shall continue to be taxed based upon the assessed valuation of the land and the improvements and the applicable tax rate at the time such taxes are levied; provided, however, that the foregoing limitation shall not deprive such real property of any benefits of exemption from taxation of an increase in assessed valuation to which it is entitled pursuant to this section; provided, however, that the foregoing limitation with respect to abatement of taxes shall not apply:

(A) to any alteration or improvement designated as a major capital improvement, by the regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section, provided that the maximum amount of tax abatement which may be received in any tax period under this section by any such multiple dwelling, building or structure for any alterations and improvements shall be limited to an amount not in excess of twenty-five hundred dollars per dwelling unit of the certified reasonable cost of the alterations and improvements as determined under regulations of the department of housing preservation and development, or (B) to any multiple dwelling which is governmentally assisted as such term is defined by said regulations.

(8) Limitation on benefits. (a) The provisions of this paragraph shall apply to all conversions, alterations and improvements except the following:

(i) alterations or improvements under paragraphs three, five and six of subdivision b of this section, where carried out:

(A) with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality, or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate incoming housing; or

(B) with mortgage insurance by the New York city residential mortgage insurance corporation or the state of New York mortgage agency; or

(C) in the areas bounded and described as follows:

AREAS IN THE COUNTY OF RICHMOND:

PORT RICHMOND--The area bounded by the Kill Van Kull; Jewett Avenue and its prolongation; Forest Avenue; and, the Willow Brook Expressway.

NEW BRIGHTON--The area bounded by the Kill Van Kull; Westervelt Avenue; Brook Street; Castleton Avenue; and, North Randall Avenue and its prolongation.

STAPLETON--The area bounded by Victory Boulevard; the Upper New York Bay; Vanderbilt Avenue; Van Duzer Street; Cebra Avenue; and, St. Pauls Avenue.

FOX HILLS--The area bounded by Vanderbilt Avenue; the Upper New York Bay; the Staten Island Rapid Transit Railway right of way; and, the Staten Island Expressway.

(D) pursuant to a program established by the federal housing administration, federal national mortgage association, federal home loan mortgage corporation or government national mortgage association for the rehabilitation of existing multiple dwellings for persons of low or moderate income, or a program of mortgage insurance for the rehabilitation of existing multiple dwellings pursuant to section two hundred twenty-three-f of the national housing act, as amended, or a program of mortgage insurance established by the federal housing administration for the rehabilitation of existing multiple dwellings for persons of low or moderate income; provided that properties receiving benefits under such programs are located in a neighborhood strategy area, as defined, by the United States department of housing and urban development, or in one of the areas listed in subparagraph (C) of this paragraph.

(ii) alterations or improvements under paragraph four of subdivision b of this section; and

(iii) conversion of residential units qualified for the protection of article seven-C of the multiple dwelling law under paragraph seven of subdivision b of this section.

(b) Abatement limitations. (i) The amount of abatement under subdivision c of this section shall not exceed the certified reasonable cost of the conversion, alteration or improvement, as determined under regulations of the department of housing preservation and development, provided that the amount of certified reasonable cost eligible for abatement under this section shall not exceed fifteen thousand dollars for a dwelling unit of three and one-half rooms, as determined under the applicable zoning resolution, and a comparable amount for dwelling units of other sizes, determined under regulations of the department of housing preservation and development, and further provided that the amount of certified reasonable cost eligible for abatement under this section may exceed fifteen thousand dollars or such comparable amount per dwelling unit, but not more than twenty-five percent above such amount, upon application of the property owner and a determination by the department of housing preservation and development that:

(A) in the case of a conversion under paragraph one or two of subdivision b of this section, the increased cost is necessary to comply with applicable law;

(B) in the case of an alteration or improvement under paragraph six of subdivision b of this section, the increased cost is necessary to eliminate the unhealthy or dangerous conditions or replace the inadequate and obsolete facilities in a satisfactory manner;

(C) in the case of an alteration or improvement under paragraph five of subdivision b of this section, the increased cost is necessary to conserve energy in a satisfactory manner; or

(D) in the case of an alteration or improvement under paragraph three of subdivision b of this section, the increased cost, to the extent such cost is not offset by any and all tax credits received as a result of the alteration or improvement, is necessary to comply with any provision of law regulating historic or landmark buildings or structures.

(ii) Notwithstanding any other provisions of this subparagraph, and in addition to all other conditions of eligibility for the benefits of this section, the availability of abatements pursuant to subdivision c of this section for any multiple dwellings, buildings or structures not owned as a condominium or cooperative, except for multiple dwellings in which units have been newly created by substantial rehabilitation of vacant buildings or conversions of non-residential buildings, shall be conditioned on the assessed valuation of such multiple dwelling, building or structure, including land, not exceeding an average of thirty thousand dollars per dwelling unit at the time of commencement of the alterations or improvements, provided, however, that such average shall not exceed forty thousand dollars per dwelling unit at the time of commencement of the alteration or improvement for alterations or improvements commenced after the effective date of this paragraph.

(c) Exemption limitations. (i) The increase in assessed valuation of the real property resulting from the conversion, alteration or improvement under subdivision b of this section, shall be exempt from taxation as provided in this section, only to the extent provided in this subparagraph, provided that this subparagraph shall not apply to any conversions, alterations or improvements commenced on or after June first, nineteen hundred eighty-six. The amount of the increased assessed valuation that is exempt from taxation shall depend on the amount of the total assessed value per dwelling unit calculated by dividing the amount of the total assessed valuation of the property, as determined under the real property tax law, by the number of dwelling units in the building after completion of the conversion, alteration or improvement. The amount of increased assessed valuation that will be exempt from taxation for buildings with total assessed valuation per dwelling unit of less than thirty-eight thousand dollars shall be calculated pursuant to the following formula: (A) any portion of total assessed valuation of the property attributable to the first eighteen thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be one hundred percent exempt; (B) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be seventy-five percent exempt; (C) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be fifty percent exempt; (D) any portion of total assessed valuation attributable to the next four thousand dollars of total assessed

valuation per dwelling unit, to the extent it represents increased assessed valuation, shall be twenty-five percent exempt; and (E) any portion of total assessed valuation attributable to the next eight thousand dollars of total assessed valuation per dwelling unit, to the extent it represents increased assessed valuation per dwelling unit, shall be fully taxable. Property with a total assessed valuation per dwelling unit of thirty-eight thousand dollars or more shall not be eligible for a tax exemption under this section.

(ii) In calculating the amount of increased assessed valuation that will be exempt from taxation pursuant to the formula in clause (i) of this subparagraph, the full amount of total assessed valuation that does not represent increased assessed valuation shall be applied in such formula prior to the inclusion of any amount of increased assessed valuation.

(iii) Where the real property is occupied in part for residential purposes and in part for non-residential purposes, the assessed valuation of the property shall be appropriately allocated between the residential and non-residential portions. In computing the total assessed valuation per dwelling unit under this subparagraph, only the amount of valuation so allocated to the residential portion shall be considered.

(iv) Commencing with the assessment roll for the year nineteen hundred eighty-four, where there has been a change in the level of assessment from the assessment roll of the prior year of properties receiving exemptions under this section, the department of finance may petition the state board to certify the percentage of such change for the purposes of this section. In such petition, the department of finance shall submit such information as the state board shall require in order to certify the percentage of such change. The state board may also make such a certification on its own motion. Upon receipt of such certification from the state board, the department of housing preservation and development may modify the dollar values of total assessed valuation per dwelling unit in clause (i) of this subparagraph to reflect the percentage change in the level of assessment as shown in such certification. As used in this subparagraph, the term "change in the level of assessment" means the net increase or decrease in the assessed valuation of properties in the assessing unit that received exemptions under this section in the current year as compared to those that received exemptions under this section in the prior year as a result of assessing such properties at a higher or lower ratio of full value.

(v) (A) Notwithstanding the provisions of clause (i) of this subparagraph, the department of housing preservation and development may reduce or remove the limitations on the exemption from taxation provided in such clause with respect to a particular property undergoing alteration or improvement, upon application of the property owner and a determination by such department that the increased benefit will increase the number of dwelling units that will be affordable to persons of low and moderate income, and the increased benefit is necessary to make economically viable units or improvement in the quality of dwelling units that will be affordable to persons of low or moderate income.

(B) As used in this subparagraph, the term "persons of low or moderate income" shall mean persons who would qualify for housing subsidies pursuant to section two hundred thirty-five of the national housing act, as amended, at one hundred thirty-five percent of the income limitations provided therein.

(C) Upon receiving an application under this subparagraph in proper form, the department of housing preservation and development shall imme-

diately submit it to the community board for the area in which the project is located, which may, within forty-five days of receiving it and after a public hearing, make recommendations to the department as to the application. The department shall act on the application within sixty days of receiving it from the property owner in proper form, but not before expiration of the time for the community board to make its recommendations, unless the board has acted sooner.

(d) The department of housing preservation and development may set forth preliminarily the terms of a determination under subparagraph (b) or (c) of this paragraph prior to the commencement of the conversion, alteration or improvement. Any such determination shall take effect after completion of the work in accordance with the terms of the application made by the property owner.

(e) Any determination of the department of housing preservation and development to increase an abatement under subparagraph (b) of this paragraph, or to reduce or remove the exemption limitations under subparagraph (c) of this paragraph shall state the basis for the determination and the data on which the determination was based. Such determination shall be published in the City Record for five consecutive days after the determination is rendered.

e. Notwithstanding any provision of this section or any other section of the code to the contrary, where such dwelling is in an area where a plan of redevelopment, program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement is being carried out, the rents subsequent to conversion, alteration or improvement may exceed the maximum amount allowable pursuant to chapter four of title twenty-six of the code of the preceding municipality where necessity for the adjustment of such rents is certified by the department of housing preservation and development.

f. Subject to the provisions of subdivision d of this section, the department of housing preservation and development shall determine and certify the reasonable cost of any such conversions, alterations or improvements and eligibility for the benefits of this section and for that purpose may adopt rules and regulations, administer oaths to and take the testimony of any person, including but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such bills, books, papers or other documents as it shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such conversions, alterations or improvements, may establish maximum allowable costs of specified units, fixtures or work in such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements before the start thereof. Applications for certification shall include all bills and other documents showing the cost of construction or such other evidence of such cost as shall be satisfactory to the department of housing preservation and development, including, without limitation, certification of cost by a certified public accountant in accordance with generally accepted accounting principles. Applications for certification for a building eligible for benefits pursuant to paragraph three of subdivision d of this section, for alterations or improvements completed more than three years after its conversion to cooperative or condominium ownership, shall include such documentation of the sale price of dwelling units or stock allocated to such dwelling units as may be required by the department of housing preservation and

development, including but not limited to certification of sales price by a certified public accountant. In addition, such applications shall contain the consent of the applicant to allow the department of housing preservation and development access to records, including but not limited to other tax records, as the department may deem appropriate to enforce such conditions of eligibility. Applications for certification filed on or after January first, nineteen hundred seventy-nine pursuant to paragraphs one through six and paragraph eight of subdivision b of this section shall be made after completion and within forty-eight months following the start of construction of the conversion, alteration or improvement, except that applications for certification for alterations or improvements undertaken by a housing development fund company organized pursuant to article eleven of the private housing finance law, which are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local governmental agency or instrumentality or which are carried out in a property transferred from the city of New York or city of Staten Island shall be made after completion and within seventy-two months following the start of the construction of the alteration or improvement. Provided, however, the department of housing preservation and development is empowered to grant an extension of the period for application for any project carried out with the substantial assistance of loans, grants or subsidies from any federal, state or local governmental agency or instrumentality, if such application is made within seventy-two months from commencement of construction. Applications for certification pursuant to paragraph seven of subdivision b of this section shall be filed within twelve months of the date of completion as provided by such subdivision.

g. To the end that conversions, alterations or improvements in such property shall interfere as little as practicable with the clearance, rehabilitation or rebuilding of sub-standard and insanitary areas and shall be confined to buildings and structures which are structurally sound and comply with applicable provisions of law, eligibility for the benefits of this section shall be restricted to such buildings and structures which the department of housing preservation and development shall certify:

(1) to be structurally sound and to comply with applicable provisions of law, as determined by the department of buildings, which certification shall be evidenced by a certificate describing the property involved;

(2) if in an area for which a final plan of clearance, replanning, reconstruction, rehabilitation, or redevelopment has been approved pursuant to article fifteen of the general municipal law, or if in an area for which an urban renewal plan or tests, studies or demonstrations have been approved pursuant to article fifteen of the general municipal law, to be improved in conformity with such replanning, reconstruction, rehabilitation, redevelopment, tests, studies, demonstrations or plan; and

(3) if in an area where a program of local neighborhood improvement or housing maintenance is being carried out, to be in conformity with such program.

h. Application forms for the benefits of this section shall be filed with the department of finance within the time periods to be established by rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section. The department of finance shall certify the amount of taxes to be abated, pursuant to the certification of the department of housing preservation

and development as herein provided. No such application shall be accepted unless accompanied by a copy of the certificate of the department of housing preservation and development both as to reasonable cost and as to eligibility as provided in subdivision f of this section.

i. The benefits of this section shall not apply:

(1) except as provided in subdivision d of this section, to any existing dwelling which is not subject to the provisions of the emergency housing rent control law or to the city rent and rehabilitation law or to the city rent stabilization law or to the private housing finance law or to any federal law providing for supervision or regulation by the United States department of housing and urban development;

(2) to any private dwelling, notwithstanding any other provision of this section, unless it is in an area where a plan of redevelopment or program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement is being carried out and the department of housing preservation and development finds that the conversion, alteration or improvement is in conformity with such plan of redevelopment, or program of neighborhood improvement, housing maintenance, demonstration rehabilitation or concentrated code enforcement; provided that, however, for the purposes of this section, a class A multiple dwelling may be deemed to include any garden-type maisonette dwelling project consisting of a series of dwelling units which together and in their aggregate were arranged or designed to provide three or more apartments and are provided as a group collectively with all essential services such as, but not limited to, water supply, house sewers and heat, and which are in existence and operated as a unit under single ownership on the date upon which an application for the benefits of this section is received by the department of housing preservation and development, even though certificates of occupancy were issued for portions thereof as private dwellings;

(3) to any property receiving tax exemption or abatement concurrently for rehabilitation or new construction under any other provision of New York state, city of New York or city of Staten Island law with the exception of any alteration or improvement to property receiving such tax exemption or abatement under the provisions of the private housing finance law, provided, however, that the benefits of this section shall not apply to any alterations or improvements done in connection with the refinancing, pursuant to section 223f of the national housing act, as amended, of a housing project organized pursuant to article two and article four of the private housing finance law;

(4) to any multiple dwelling for ordinary repairs and normal replacement of maintenance items, as provided in paragraph one of subdivision a, hereof in the event that the dwelling thereof is receiving the benefits of this section for other ordinary repairs and normal replacement of maintenance items as of the December thirty-first preceding the date of application;

(5) to the conversion of any building or structure, or portion thereof:

(i) which is located in the city of Staten Island where residential conversion as of right is not permitted by the zoning resolution;

(ii) where such benefits are eliminated by regulations to be promulgated by the department of housing preservation and development pursuant to subdivision m of this section, unless, in the case of a building or structure in Richmond county, construction actually commenced prior to October first, nineteen hundred eighty-three, pursuant to an alteration permit. A copy of any proposed regulation pursuant to this paragraph

shall be transmitted to the city council not less than sixty days prior to its publication in the City Record, pursuant to section eleven hundred five of the charter of the preceding municipality as it existed on the first of January, in the year next succeeding the effective date of this section; and

(iii) provided that the provisions of this paragraph shall not apply to conversions pursuant to paragraph seven of subdivision b of this section.

(6) to any conversion of or alteration or improvement, commenced on or after July first, nineteen hundred eighty-two, to any class B multiple dwelling or class A multiple dwelling used in whole or in part for single room occupancy, regardless of the status or use of the building after the conversion, alteration or improvement unless such conversion, alteration or improvement is carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality.

(7) to any conversion of or alteration or improvement, commenced on or after the effective date of this paragraph, to any property classified under the zoning resolution as a non-profit institution with sleeping accommodations, regardless of the status or use of the building after the conversion, alteration or improvement unless such conversion, alteration or improvement is carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality.

j. Notwithstanding the provisions of the multiple dwelling law, or any local law, ordinance, provisions of this code, rule or regulation, any dwelling to which alterations and improvements are made pursuant to this section and which did not require a certificate of occupancy on April second, nineteen hundred forty-five, may be occupied lawfully after such date upon the completion of such alterations and improvements without such a certificate being obtained, provided, however, that such alterations and improvements shall have been made in conformity with law and the applicable provisions for fire protection required by articles six and seven of the multiple dwelling law.

k. No owner of a dwelling to which the benefits of this section shall be applied, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or being eligible for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. 1437 et seq., or the senior citizen rent increase exemption program, pursuant to either chapter seven of title twenty-six of the code of the preceding municipality or section 26-509 of such code, any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall have the meaning set forth in section 8-102 of the code of the preceding municipality. Nothing in this subdivision shall restrict such consideration in the development of housing accommodations for the purpose of providing for the special needs of a particular group.

l. Any person who shall knowingly and willfully make any false statement as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety

days, or both. The commissioner of the department of housing preservation and development may reduce or revoke past and future exemption or tax abatement authorized pursuant to this section if the application for tax exemption or tax abatement contains a false statement or false information as to a material matter or omits a material matter.

m. Each agency or department to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purpose of this section.

n. The department of housing preservation and development may require a filing fee in an amount as provided by the rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision m of this section.

o. Any tax abatement granted for a period of nine years to a multiple dwelling aided by a loan provided by the city of New York prior to January first, nineteen hundred seventy-one, shall upon application therefor be adjusted to extend for a period of up to twenty years, provided that the total abatement before and after such adjustment shall not exceed the total abatement to which such property was initially entitled under this section.

p. This section is enacted pursuant to the provisions of section four hundred eighty-nine of the real property tax law and subdivision two of section four hundred five of the private housing finance law.

q. No application for the benefits of this section shall be accepted by the department of finance if there are outstanding real estate taxes or water and sewer charges or payments in lieu of taxes which were due and owing as of the last day of the tax period preceding the date of such filing with the department of finance, provided that an applicant aided by article eight or article fifteen of the private housing finance law shall have such application accepted by the department of finance if there are no outstanding real estate taxes or water and sewer charges due and owing as of the last day of the tax period preceding commencement of construction.

r. In the event that any building or structure receiving the benefits of this section shall become operated exclusively for commercial, hotel or transient hotel use, the tax commission shall withdraw benefits granted herein prospectively.

s. The benefits of this section shall not apply to alterations or improvements to existing dwellings in existence on December thirty-first, nineteen hundred seventy-five where (i) such alterations or improvements were completed on or before December thirty-first, nineteen hundred seventy-five, and (ii) no dwelling units thereof on December thirty-first, nineteen hundred seventy-five had rentals which were subject to control by the city rent agency pursuant to chapter four of title twenty-six of the code of the preceding municipality. This subdivision shall not apply to alterations or improvements to any building or structure which is benefitted by mortgage insurance pursuant to section two hundred thirteen of the national housing act for applications filed prior to January first, nineteen hundred seventy-nine.

t. Notwithstanding any law to the contrary, the owner of any building or structure eligible for any of the benefits of this section which is converted to a class A multiple dwelling, completed, or substantially rehabilitated on or after January one, nineteen hundred seventy-four, shall register the initial rent for each dwelling unit in such building or structure with the New York state division of housing and community renewal. After such registration, the rents of such dwelling units shall be fully subject to regulations under chapter four of title twenty-six

of the code of the preceding municipality so long as the benefits of this section are in effect or for such longer period as may be provided by law.

u. Any tax exemption or tax abatement authorized pursuant to this section may be revoked retroactively by the commissioner of department of housing preservation and development or the department of finance at any time during the authorized term of such tax exemption or tax abatement if real estate taxes or water and sewer charges due to the city of New York or city of Staten Island remain unpaid for one year after the same are due and payable. In no event shall revocation be effective prior to the date such taxes or charges were first due and payable.

v. Where alterations, improvements, or conversions include or benefit that part of a building which is not occupied for dwelling purposes but is occupied by stores or otherwise used for commercial purposes or community facilities, the increase in assessed valuation and the cost of the alteration shall be apportioned so that the benefits of this title shall not be provided for alterations, improvements or conversions made for other than dwelling purposes.

w. If any provision of this section or its application to any person shall be held invalid, the remainder of this section and the applicability of its provisions to other persons or circumstances shall not be affected thereby.

x. Notwithstanding any provision of this section, no benefit pursuant to paragraph four of subdivision b of this section shall be granted for work commenced after January first, nineteen hundred eighty, unless the applicant establishes that the department of housing preservation and development and tenants of such class A multiple dwelling were given notice of (i) the proposed work prior to commencement of such work, (ii) the identity of the owner's representative, and (iii) the tenants' rights under applicable law with respect to such work, provided that, in the case of a loan program supervised by such department, notice to the department shall be unnecessary, and further provided that the department may itself provide the required notice to the tenants.

y. Applicants for benefits under the provisions of this section shall file with the department of finance a form supplied by said department which (i) states an intention to file for benefits under the provisions of this section, (ii) describes the work for which tax benefits will be claimed and (iii) estimates the cost of such work which will be eligible for benefits. Such form shall be filed prior to the commencement of such work. If the scope of such work or the estimated cost thereof changes materially, applicant shall file a revised statement. Applicants who fail to comply with the requirements of this subdivision shall be subject to a penalty not to exceed one hundred percent of the filing fee otherwise payable pursuant to subdivision n of this section.

z. A former tenant or former subtenant of premises in a non-residential building which is the subject of an application for an alteration permit for conversion to a class A multiple dwelling, prior to the application for any tax exemption or abatement benefits for such building pursuant to this section, and as a condition to the grant thereof, shall be entitled to a relocation award under the terms and conditions set forth below:

(1) As used in this subdivision, the term "eligible tenant" shall mean any former tenant or former subtenant who:

(i) leased and used the vacated premises to conduct a manufacturing, warehousing, or wholesaling business for not less than two consecutive years immediately prior to vacating;

(ii) vacated such premises on or after April first, nineteen hundred eighty-one for any reason other than eviction for non-payment of rent;

(iii) vacated such premises (a) no earlier than twenty-four months prior to the filing date of an application for such alteration permit and (b) no later than the completion of the conversion as evidenced by the issuance of a permanent certificate of occupancy for a class A multiple dwelling;

(iv) either purchased or leased for a term of not less than eighteen months other premises within the city of Staten Island with a floor area not less than one-third of the floor area of the vacated premises;

(v) relocated their business to such other premises within one year of vacating the vacated premises; and

(vi) paid all commercial rent or occupancy tax for the vacated premises. A subtenant shall be eligible to receive a relocation award notwithstanding any lack of eligibility of its prime tenant;

(2) the relocation award shall not exceed the greater of (i) the aggregate base rent which accrued and was paid by the eligible tenant during the final twenty-four months of its occupancy of the vacated premises or (ii) four dollars for each square foot that the eligible tenant occupied in the vacated premises during the final twenty-four months of its occupancy of the vacated premises. As used in this subdivision, base rent shall be calculated in the same manner as base rent is calculated for purposes of commercial rent or occupancy tax in the city of Staten Island. However, the aggregate award payable to a prime tenant and/or any subtenants of such prime tenant shall not exceed the amount which would have been payable to the prime tenant had the prime tenant been eligible for an award based on the entire floor area it leased from the owner; and if such limitation applies, the awards shall be prorated based upon the total floor area used and occupied by each eligible tenant;

(3) the relocation award shall become due and payable to an eligible tenant at the time the eligible tenant (i) either purchases or leases other premises in accordance with paragraph one of this subdivision, and (ii) certifies eligibility to, and demands payment of, the award from the owner of the vacated building. If the relocation award is not paid within thirty days of such certification and demand, interest shall accrue on the relocation award from the date of the certification and demand at the rate of twenty-four percent per annum;

(4) at any time after such certification and demand and prior to the date of the filing of an application for tax exemption or abatement for the vacated building pursuant to this section, an eligible tenant who has not received a relocation award shall have a right to file a notice of claim. Such notice of claim shall be filed with the county clerk of the county and shall verify the claimant's name, its compliance with eligibility requirements, the address of the vacated premises, the floor area it occupied, the name of the prime tenant if the claimant is a subtenant, and all the base rent that accrued and was paid by the claimant during the final twenty-four months of its occupancy;

(5) a notice of claim, filed in accordance with paragraph four of this subdivision, may be discharged by the filing of an undertaking with the county clerk in an amount equal to the amount claimed and in accordance with the procedures set forth in subdivision four of section nineteen of the lien law, or by the payment into court of such amount in accordance with the procedures set forth in section fifty-five of such law;

(6) no tax exemption or abatement shall be granted pursuant to this section unless the department of housing preservation and development

receives an affidavit from the applicant for benefits of this section which verifies that:

(i) the applicant has caused to be published a notice in a newspaper of general circulation within the city of Staten Island, no later than sixty days prior to filing of an application for tax exemption or abatement pursuant to this section, which advises former tenants and subtenants of their rights pursuant to this subdivision; and

(ii) no notice of claim has been filed or all claims have been released by the claimants, or secured in accordance with the provisions of paragraph five of this subdivision, or discharged as an improper claim by court order;

(7) the affidavit required pursuant to the provisions of paragraph six of this subdivision shall be considered part of the application for benefits pursuant to this section;

(8) if an eligible tenant has duly filed a notice of claim pursuant to paragraph four of this subdivision and did not receive a relocation award as provided herein, it may commence an action against any applicant who filed a false affidavit pursuant to paragraph six of this subdivision or any security posted by such applicant pursuant to paragraph five of this subdivision, within three years of such filing. In any action to enforce a claim pursuant to this subdivision, if the court finds that the claimant has wilfully exaggerated the amount of the claim, the claimant may be held liable in damages for an amount not to exceed the proper relocation award. An eligible tenant in whose favor a judgment is entered shall be entitled to costs and reasonable legal fees and disbursements provided that such judgment is in excess of the amount which the applicant or owner offered to pay the eligible tenant; and

(9) any lease or other rental agreement provision exempting, waiving, releasing or discharging the obligation to pay a relocation award pursuant to this subdivision shall be void as against public policy and wholly unenforceable.

aa. Harassment. (1) The provisions of this subdivision apply to and are additional requirements for claiming or receiving:

(a) any tax exemption under this section; or

(b) any tax abatement under this section where the certified reasonable cost per dwelling unit of the conversion, alteration or improvement (including the cost of any conversion, alteration or improvement for which an abatement was approved within four years prior to commencement of the conversion, alteration or improvement) exceeds seven thousand five hundred dollars.

(2) The owner of the property shall file with the department of housing preservation and development, not less than thirty days before the commencement of the conversion, alteration or improvement (hereinafter referred to as the "cut-off date"), an affidavit, or, where any information referred to in paragraph one of this subdivision changes prior to applying for or claiming any benefit under this section, an amending affidavit, setting forth the following information:

(a) every owner of record and owner of a substantial interest in the property or entity owning the property or sponsoring the conversion, alteration or improvement;

(b) a statement that none of such persons had, within the five years prior to the cut-off date, been found to have harassed or unlawfully evicted tenants by judgment or determination of a court or agency (including a non-governmental agency having appropriate legal jurisdiction) under the penal law, any state or local law regulating rents or

any state or local law relating to harassment of tenants or unlawful eviction; and

(c) any change in the information required to be set forth.

(3) No conversion, alteration or improvement subject to this subdivision shall be eligible for tax exemption or tax abatement under this section where:

(a) any affidavit required under this subdivision has not been filed;

(b) any such affidavit contains a willful misrepresentation or omission of any material fact; or

(c) any person referred to in subparagraph (a) of paragraph two of this subdivision has been found to have harassed or unlawfully evicted tenants as described in that paragraph, until and unless the finding is reversed on appeal, provided that any such finding after the cut-off date shall not apply to or affect any tax abatement or exemption for the conversion, alteration or improvement covered by the affidavit.

(4) The department of housing preservation and development and the department of finance shall maintain a list of affidavits as described in paragraph two of this subdivision. Each agency shall review that list with respect to each application or claim for benefits subject to this subdivision.

(5) "Substantial interest" as used in subparagraph (a) of paragraph two of this subdivision shall mean ownership of an interest of ten per centum or more in the property or entity owning the property or sponsoring the conversion, alteration or improvement.

(6) Where the conversion, alteration or improvement is commenced before August first, nineteen hundred eighty-three, the cut-off date shall be as set forth in this subdivision, but no affidavit shall be required to be filed until thirty days after the effective date of this subdivision.

bb. Notwithstanding any contrary provision of the private housing finance law, the benefits of this section shall apply to any limited profit housing company as provided in this section. Such multiple dwelling, building or structure shall be eligible for benefits where at least one building-wide improvement or alteration is part of the application for benefits. Furthermore, to the extent that such alterations or improvements are financed with grants, loans or subsidies from any federal, state, or local agency or instrumentality, such multiple dwelling, building or structure shall be eligible for benefits only if the limited profit housing company has entered into a binding and irrevocable agreement with the commissioner of housing of the state of New York, the supervising agency, as such term is defined in section two of the private housing finance law, the New York city housing development corporation, or the New York state housing finance agency prohibiting the dissolution or reconstitution of such limited profit housing company pursuant to section thirty-five of the private housing finance law for not less than fifteen years from the commencement of benefits. The abatement of taxes on such property, including the land, shall not be an amount greater than ninety per centum of the certified reasonable cost of such alterations or improvements, as determined under regulations of the department of housing preservation and development, nor greater than eight and one-third percent of such certified reasonable cost in any twelve-month period, nor be effective for more than twenty years. The annual abatement of taxes in any twelve-month period shall in no event exceed fifty percent of the amount of taxes payable in such twelve-month period pursuant to the applicable exemption granted pursuant to article two of the private housing finance law or other applicable laws or fifty

percent of payments required to be made in lieu of taxes in such twelve-month period. Provided, however, the annual abatement of taxes for alterations or improvements commenced prior to June first, nineteen hundred eighty-six may not be applied to reduce the amount of taxes payable or the amount of payments required to be made in lieu of taxes in any twelve-month period to an amount less than the minimum amount of taxes required to be paid pursuant to section thirty-three of the private housing finance law.

cc. The commissioner of the department of housing preservation and development and the commissioner of the department of finance shall prepare an annual report which shall be submitted to the Mayor and the council on or before the first of July next succeeding the year to which the report pertains, regarding the exemptions and abatements granted pursuant to this section and shall include, but not be limited to the following information: (i) the amount of real property tax that would have been paid in the aggregate by the owners of real property granted an exemption or abatement if the property were fully taxable and the amount of tax actually paid in the aggregate by such owners, (ii) the geographic distribution of exemptions and abatements granted pursuant to this section, and (iii) a distribution by type of eligible categories as delineated in paragraphs one through nine of subdivision b of this section.

dd. Partial waiver of rent adjustments attributable to major capital improvements. (1) The provisions of this subdivision apply to and are additional requirements for claiming or receiving any tax abatement under this section, except as provided in paragraphs three and four of this subdivision.

(2) The owner of the property shall file with the department of housing preservation and development, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by the New York state division of housing and community renewal pursuant to the rent stabilization code or its successor statute for the city of Staten Island equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by such division, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with the New York state division of housing and community renewal. Such declaration shall be binding upon such owner, and his or her successors and assigns.

(3) The provisions of this subdivision shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with the substantial assistance of city, state or federal subsidies.

(4) The provisions of this subdivision shall apply only to alterations and improvements commenced after the effective date of such subdivision.

§ 11-244 Tax exemption and abatement for rehabilitated buildings. a. As used in this section, the following terms shall have the following meanings:

1. "Eligible real property" shall mean:

(i) any class B multiple dwelling;

(ii) any class A multiple dwelling used for single room occupancy pursuant to section two hundred forty-eight of the multiple dwelling law which contains no more than twenty-five percent class A dwelling units which contain lawful sanitary and kitchen facilities within the dwelling unit, provided that in the case of a multiple dwelling containing ten dwelling units or less, up to forty percent of the dwelling units may be class A units; and

(iii) not-for-profit institutions with sleeping accommodations.

Notwithstanding the foregoing, eligible real property shall not include college and school dormitories, club houses, or residences whose occupancy is restricted to an institutional use such as housing intended for use primarily or exclusively by the employees of a single company or institution. A building is an eligible real property only if it qualifies as such after completion of the eligible improvements, but need not have been an eligible real property prior to the eligible improvements.

2. "Eligible improvements" shall be limited to the following categories of work, provided further that such work shall be in conformity with all applicable laws:

(i) replacement of a boiler or burner or installation of an entire new heating system;

(ii) replacement or upgrading of electrical system;

(iii) replacement or upgrading of elevators;

(iv) installation or replacement or upgrading of the plumbing system, including water main and risers;

(v) replacement or installation of walls, ceilings, floors or trim where necessary;

(vi) replacement or upgrading of doors, installation of security devices and systems;

(vii) installation, replacement or upgrading of smoke detectors, fire alarms, fire escapes or sprinkler systems;

(viii) replacement or repair of roof, leaders and gutters;

(ix) replacement or installation of bathroom facilities;

(x) installation of wall and pipe insulation;

(xi) replacement or upgrading of street connections for water or sewer services;

(xii) replacement or installation of windows, or installation of window gates or guards;

(xiii) installation or replacement of boiler smoke stack;

(xiv) pointing, waterproofing and cleaning of entire building exterior surface;

(xv) improvements designed to conserve the use of fuel, electricity or other energy sources;

(xvi) work necessary to effect compliance with all applicable laws including, but not limited to the multiple dwelling law, the city housing maintenance code or its successor statute for the city of Staten Island and the building code; and

(xvii) improvements unique to congregate living facilities, as defined by rules and regulations promulgated by the department of housing preservation and development.

3. "Existing dwelling" shall mean any eligible real property in existence prior to the commencement of eligible improvements, for which tax exemption and abatement is claimed under the terms of this section and for which a valuation appears on the annual record of assessed valuation of the city for the fiscal year immediately preceding the commencement of construction of such eligible improvements.

4. "Commencement of eligible improvement" shall mean the beginning of any physical operation undertaken for the purpose of making eligible improvements to eligible real property.

5. "Completion of eligible improvement" shall mean the conclusion or termination of any physical operation referred to in the preceding paragraph, to an extent or degree which renders an eligible property capable of use for the purpose for which the improvements were intended.

6. "Permanent resident" shall mean a person who has resided in eligible real property for six months or more; has a lease or other rental agreement for a term of six or more months; or has requested a lease pursuant to the provisions of the rent stabilization code or its successor statute for the city of Staten Island for housing accommodations located in hotels.

b. Any increase in the assessed valuation of eligible real property shall be exempt from taxation for local purposes for a period of thirty-two years to the extent such increase results from eligible improvements, provided that:

(i) the eligible improvements are commenced after July first, nineteen hundred eighty, and prior to the thirty-first of December in the year next succeeding the effective date of this section, and are completed within thirty-six months from commencement;

(ii) the department of housing preservation and development determines and certifies the cost, qualification and eligibility of any improvement for benefits of this section;

(iii) the exemption may commence no sooner than the July first following the filing with the department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the exemption may commence no sooner than the July first following the commencement of construction of eligible improvements;

(iv) immediately prior to, and during, the construction of eligible improvements, not less than fifty percent of the dwelling units in such eligible real property are occupied by permanent residents; provided that such occupancy requirement shall not apply to a vacant, governmentally owned multiple dwelling which had been vacant for not less than two years prior to the commencement of construction of eligible improvements, nor to a vacant multiple dwelling where the eligible improvements are carried out with the substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality or any not-for-profit philanthropic organization one of whose primary purposes is providing low or moderate income housing;

(v) no outstanding real estate taxes, water and sewer charges, payments in lieu of taxes or other municipal charges are due and owing as of the tax quarter immediately preceding the commencement of tax exemption pursuant to this section; provided that an applicant aided pursuant to the provisions of the private housing finance law shall have such application accepted by the tax commission if there are no outstanding real estate, water and sewer taxes due and owing as of the

last day of the tax quarter preceding commencement of construction of eligible improvements;

(vi) except in the case of eligible real property which is receiving or has received assistance pursuant to a governmental rent subsidy program or which is owned by a not-for-profit corporation or by a wholly owned subsidiary of a not-for-profit corporation and which is receiving or has received assistance pursuant to a governmental loan subsidy program, as defined by the rules and regulations promulgated by the department of housing preservation and development, for the construction of eligible improvements, the initial rent after completion of eligible improvements, for ninety percent of the total number of dwelling units occupied by permanent residents in a class A or class B multiple dwelling other than apartments shall not exceed the greater of either the amount of any governmental rental assistance received by an occupant or seventy-five percent of the rent which is permitted to be charged for zero-bedroom units on the moderate rehabilitation fair market rent schedule as determined by the United States department of housing and urban development for the housing assistance payments program under section eight of the national housing act;

(vii) no person residing in eligible real property prior to or during the construction of eligible improvements shall be required by the owner to vacate the eligible real property solely in order to perform the eligible improvements or any related work.

c. Eligible real property which qualifies for exemption from taxation for local purposes for eligible improvements shall also be eligible for an annual abatement of real property taxes in an amount not to exceed twelve and one-half percent of the reasonable cost of eligible improvements certified by the department of housing preservation and development, which abatement may commence on the first day of the first tax quarter following the filing with the department of finance of a certification of eligibility issued by the department of housing preservation and development for benefits of this section; provided, however, that if the rehabilitation is carried out with substantial government assistance as part of a program for affordable housing the abatement may commence no sooner than the first day of the first tax quarter following the commencement of construction of eligible improvements, provided further that:

(i) the annual abatement shall not exceed the amount of taxes otherwise payable in the corresponding year;

(ii) the period during which such abatement is effective shall not exceed twenty consecutive years from the date such abatement first becomes effective; and

(iii) the total abatement shall not exceed the lesser of one hundred fifty percent of the certified reasonable costs of eligible improvements or the actual costs as determined by the department of housing preservation and development pursuant to its rules and regulations.

d. During the period of tax exemption or abatement pursuant to this section, each of the following shall be a condition precedent to the continuation of the exemption and/or abatement:

(i) compliance with all applicable provisions of law, including, but not limited to the multiple dwelling law, the building code and the housing maintenance code of the preceding municipality;

(ii) all dwelling units, except owner occupied units, shall be subject to the emergency housing rent control law or the local housing rent control act or the tenant protection act of nineteen hundred seventy-four, or any local laws enacted pursuant thereto or the rent stabiliza-

tion law of nineteen hundred sixty-nine or their successor statutes for the city of Staten Island; provided, however, that the department of housing preservation and development may exempt from this requirement dwelling units that are not occupied by permanent residents in those buildings owned by a not-for-profit corporation and which are improved with the aid of a rehabilitation loan from any government agency or instrumentality or operated pursuant to a contract with a governmental entity.

(iii) eligible real property receiving tax exemption or tax abatement benefits under this section shall not receive tax exemption or tax abatement for new construction or rehabilitation under any other provision of law;

(iv) the eligible improvements shall not be used as the basis for any application for rent increases and the owner shall file a statement to such effect with the department of housing preservation and development and with any appropriate rent regulatory agency, provided, however, that rents of units improved with the aid of a rehabilitation loan from any governmental agency or instrumentality may within the limitations established by this section be increased pursuant to the rules and regulations of the department of housing preservation and development; and

(v) a minimum of seventy-five percent of the dwelling units shall be rental units occupied by permanent residents; provided, however that the department of housing preservation and development may exempt from this requirement those buildings improved with the aid of a rehabilitation loan from any governmental agency or instrumentality or operated pursuant to a contract with a governmental entity.

e. During the period of tax exemption or abatement pursuant to this section, the owner shall submit an annual certification to the department of housing preservation and development in the form prescribed by such department. Failure to submit such certification in any given year may result in the revocation of benefits. The certification shall include the following:

(i) the total number of dwelling units within the eligible real property and the total number of dwelling units occupied by permanent residents;

(ii) the number of dwelling units subject to the provisions of the emergency housing rent control act, the emergency tenant protection act of nineteen seventy-four or any local laws enacted pursuant thereto; the emergency housing rent control law or the rent stabilization law of nineteen hundred sixty-nine or their successor statutes applicable to the city of Staten Island; and

(iii) all such other information required by the department of housing preservation and development.

f. Any tax exemption or tax abatement authorized pursuant to this section may be revoked or reduced by the department of housing preservation and development or by the department of finance at any time during the authorized term of such tax exemption or tax abatement upon a finding by either department that:

(i) the application for benefits pursuant to this section or the annual certification required hereunder contains a false statement or false information as to a material matter, or omits a material matter, in which case the revocation or reduction may be retroactive to the commencement of benefits pursuant to this section;

(ii) real estate taxes, water, sewer or other municipal charges, or payments in lieu of said taxes or charges are, and have remained, due and owing for more than one year, in which case the revocation or

reduction may be retroactive to the commencement of benefits pursuant to this section, provided that in no event shall revocation be effective prior to the date such taxes or charges were first due and payable; or

(iii) the eligible real property fails to comply with one or more of the provisions or requirements of this section.

g. Application forms for the benefits of this section shall be filed with the tax commission within the time periods to be established by rules and regulations promulgated by the department of housing preservation and development, pursuant to subdivision i of this section. The tax commission shall certify to the department of finance the amount of taxes to be abated, pursuant to the certification of the department of housing preservation and development as herein provided. No such application shall be accepted unless accompanied by a copy of the certificate of the department of housing preservation and development both as to reasonable cost and as to eligibility as provided in subdivision b of this section.

h. No owner of a dwelling to which the benefits of this section apply, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, sex, disability, marital status, age, religion, military status, gender identity or expression or sexual orientation any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision shall mean a physical, mental or medical impairment resulting from anatomical, physiological, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques. Nothing in this subdivision shall restrict such consideration in the availability of housing accommodations for the purpose of providing for the special needs of a particular group.

i. The department of housing preservation and development shall determine and certify the reasonable cost of any such conversions, alterations or improvements and eligibility for the benefits of this section and for that purpose may adopt rules and regulations, administer oaths to and take the testimony of any person, including, but not limited to the owner of such property, may issue subpoenas requiring the attendance of such persons and the production of such bills, books, papers or other documents as it shall deem necessary, may make preliminary estimates of the maximum reasonable cost of such conversions, alterations or improvements, may establish maximum allowable costs of specified units, fixtures or work in such conversions, alterations or improvements, and may require the submission of plans and specifications of such conversions, alterations or improvements before the start thereof. Applications for certification shall include all bills and other documents showing the cost of construction or such other evidence of such cost as shall be satisfactory to the department of housing preservation and development, including, without limitation, certification of cost by a certified public accountant in accordance with generally accepted accounting principles. Each additional agency to which functions are assigned by this section may adopt and promulgate rules and regulations for the effectuation of the purposes of this section.

j. The department of housing preservation and development may require a filing fee in an amount as provided by the rules and regulations promulgated by the department of housing preservation and development pursuant to subdivision i of this section.

k. Any person who shall knowingly and wilfully make any false statements as to any material matter in any application for the benefits of this section shall be guilty of an offense punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days, or both.

l. If any provision of this section or its application to any person shall be held invalid, the remainder of this section and the applicability of its provisions to other persons or circumstances shall not be affected thereby.

§ 11-245.1 Site eligibility limitations on benefits pursuant to section four hundred twenty-one-a of the real property tax law.

(a) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after November twenty-ninth, nineteen hundred eighty-five and before May twelfth, two thousand on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was twenty percent or less of the maximum floor area ratio for residential buildings,

(2) had an assessed valuation equal to or less than twenty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision and subdivisions (a-1) through (a-4) of this section, construction shall be deemed to have commenced on the date immediately following the issuance by the department of buildings of a new building permit for an entire new building (based upon architectural, plumbing and structural plans approved by such department) on which the excavation and the construction of initial footings and foundations commences in good faith, on vacant land and for the entire project site, as certified by an architect or professional engineer licensed in the state, provided that installation of footings and foundations is similarly certified by such architect or engineer to have been completed without undue delay.

(a-1) Except as provided in subdivision (a-2) of this section, where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after May twelfth, two thousand and before the effective date of subdivisions (a-3) and (a-4) of this section on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a

floor area ratio which was seventy-five percent or less of the maximum floor area ratio for residential buildings,

(2) had an assessed valuation equal to or less than seventy-five percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(a-2) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction on any tax lot now existing or hereafter created which is located south of or adjacent to either side of one hundred tenth street in the borough of Manhattan which construction commenced on or after May twelfth, two thousand and before the effective date of subdivisions (a-3) and (a-4) of this section on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and a floor area ratio which was fifty percent or less of the maximum floor area ratio for residential buildings,

(2) had an assessed valuation equal to or less than fifty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(a-3) Except as provided in subdivision (a-4) of this section, where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction commenced on or after the effective date of this subdivision on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and either (i) had a floor area ratio which was seventy-five percent or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the date thirty-six months prior to the commencement of construction, had a floor area ratio which was seventy-five percent or less of the floor area ratio of the residential building which replaces such non-residential building,

(2) had an assessed valuation equal to or less than seventy-five percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(a-4) Where eligibility for benefits under section four hundred twenty-one-a of the real property tax law is sought for any construction on any tax lot now existing or hereafter created which is located south of or adjacent to either side of one hundred tenth street in the borough of Manhattan which construction commenced on or after the effective date of this subdivision on the basis that such construction shall take place on land which, on the date thirty-six months prior to the commencement of such construction, was improved with a nonresidential building or buildings and was under-utilized, the under-utilization of the land must have been such that each building or buildings:

(1) contained no more than the permissible floor area ratio for nonresidential buildings in the zoning district in question and either (i) had a floor area ratio which was fifty percent or less of the maximum floor area ratio for residential buildings in such zoning district, or (ii) if the land was not zoned to permit residential use on the date thirty-six months prior to the commencement of construction, had a floor area ratio which was fifty percent or less of the floor area ratio of the residential building which replaces such non-residential building,

(2) had an assessed valuation equal to or less than fifty percent of the assessed valuation of the land on which the building or buildings were situated, or

(3) by reason of the configuration of the building, or substantial structural defects not brought about by deferred maintenance practices or intentional conduct, could no longer be functionally or economically utilized in the capacity in which it was formerly utilized.

For purposes of this subdivision, construction shall be deemed to have commenced as provided in subdivision (a) of this section.

(b) The department of housing preservation and development may promulgate rules and regulations for the effectuation of the purposes of this section.

(c) The limitations on benefits contained in this section shall be in addition to those contained in any other law or regulation.

§ 11-245.1-a Boundary review commission. (a) There shall be established a boundary review commission consisting of eleven members, including the commissioner of finance, the commissioner of housing preservation and development, the commissioner of buildings, the chairperson of the department of city planning, the director of the office of management and budget, the executive director of the board of standards and appeals and five members chosen by the speaker of the council. The appointees of the speaker of the council shall serve at the pleasure of the speaker. The commission shall elect a chairperson from among its members.

(b) The boundary review commission shall undertake a biennial review of the tax benefit program established pursuant to section four hundred

twenty-one-a of the real property tax law to determine whether the areas for which the tax benefits are restricted pursuant to those provisions of the administrative code which relate to such program should be revised in any manner.

(c) In conducting a review to determine whether geographic exclusion zones restricting benefits provided pursuant to section four hundred twenty-one-a of the real property tax law should be revised, the commission shall review measurers of housing activity and housing market conditions throughout the city including (i) the amount of new development; (ii) values in land sales, residential sales prices and rents; (iii) trends in land sales, residential sales prices and rents and other development trend data including land use trends, lot consolidation and board of standards and appeals actions; (iv) development potential; (v) relationship between volume of potential development and existing housing; and (vi) financial feasibility of development with and without the benefits provided pursuant to section four hundred twenty-one-a of the real property tax law.

(d) On or before December first of each even numbered year following the effective date of this section, such commission shall submit a report to the speaker of the council and the mayor on its deliberations and shall include recommendations for revisions to such boundaries that it deems appropriate or why no revisions were recommended, including the methodology by which it applied the criteria in subdivision (c) of this section to arrive at its recommendations, and all data used to make such recommendations. Any recommendations shall be consistent with the provisions of section four hundred twenty-one-a of the real property tax law.

§ 11-245.1-b Limitations on benefits pursuant to section four hundred twenty-one-a of the real property tax law. (a) As used in this section, the following terms shall have the following meanings:

(1) "Residential tax lot" shall mean a tax lot that contains dwelling units.

(2) "Non-residential tax lot" shall mean a tax lot that does not contain any dwelling units.

(3) "Annual limit" shall mean sixty-five thousand dollars, which amount shall be increased by three percent, compounded annually, on each taxable status date following the first anniversary of the effective date of the local law that added this section.

(4) "Certificate of occupancy" shall mean the first certificate of occupancy covering all residential areas of the building on or containing a tax lot.

(5) "Unit count" shall mean (i) in the case of a residential tax lot that does not contain any commercial, community facility or accessory use space, the number of dwelling units in such tax lot, and (ii) in the case of a residential tax lot that contains commercial, community facility or accessory use space, the number of dwelling units in such tax lot plus one.

(6) "Exemption cap" shall mean the unit count multiplied by the annual limit.

(b) The provisions of this section shall apply only to projects that commence construction on or after the effective date of this section.

(c) No benefits under section four hundred twenty-one-a of the real property tax law shall be conferred for any multiple dwelling containing fewer than four dwelling units, as set forth in the certificate of occupancy, unless the construction of such multiple dwelling is carried out with substantial assistance of grants, loans or subsidies from any

federal, state or local agency or instrumentality where such assistance is provided pursuant to a program for the development of affordable housing.

(d) The portion of the assessed valuation of any residential tax lot exempted from real property taxation in any year pursuant to section four hundred twenty-one-a of the real property tax law shall not exceed the exemption cap on or after the first taxable status date after the building on or containing such tax lot receives its certificate of occupancy unless, in accordance with a regulatory agreement with or approved by the department of housing preservation and development that is applicable to such tax lot, (1) the construction of such building is carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality and such assistance is provided pursuant to a program for the development of affordable housing, or (2) the department of housing preservation and development has imposed a requirement or has certified that twenty per cent of the units be restricted income units. All such restricted income units must be situated onsite. For the purposes of this section, "onsite" shall mean that restricted income units shall be situated within the building or buildings for which benefits pursuant to section four hundred twenty-one-a of the real property tax law are being granted. A dwelling unit that is located in two or more tax lots shall be ineligible to receive any benefits under section four hundred twenty-one-a of the real property tax law. The portion of the assessed valuation of all non-residential tax lots in the building on or containing such non-residential tax lots exempted from real property taxation in any year pursuant to section four hundred twenty-one-a of the real property tax law shall not exceed a cumulative total equal to the annual limit on or after the first taxable status date after the building on or containing such non-residential tax lots receives its certificate of occupancy.

(e) A new multiple dwelling that is situated in (1) a neighborhood preservation program area as determined by the department of housing preservation and development as of June first, nineteen hundred eighty-five, (2) a neighborhood preservation area as determined by the New York city planning commission as of June first, nineteen hundred eighty-five, (3) an area that was eligible for mortgage insurance provided by the rehabilitation mortgage insurance corporation as of May first, nineteen hundred ninety-two, or (4) an area receiving funding for a neighborhood preservation project pursuant to the neighborhood reinvestment corporation act (42 U.S.C. §§ 8101 et seq.) as of June first, nineteen hundred eighty-five, shall only be eligible for the benefits available pursuant to subparagraph (iii) of paragraph (a) of subdivision two of section four hundred twenty-one-a of the real property tax law if:

a. the construction is carried out with substantial assistance of grants, loans or subsidies from any federal, state or local agency or instrumentality and such assistance is provided pursuant to a program for the development of affordable housing, or

b. the department of housing preservation and development has imposed a requirement or has certified that twenty percent of the units be restricted income units. All such restricted income units must be situated onsite.

(f) The department of housing preservation and development may promulgate rules and regulations to effectuate the purposes of this section.

(g) The limitations on eligibility for benefits contained in this section shall be in addition to those contained in any other law, rule or regulation.

(h) Notwithstanding anything to the contrary contained herein, the limitations on eligibility for benefits contained in this section shall not apply to a covered project as defined in subparagraph (i) of paragraph a of subdivision six of section four hundred twenty-one-a of the real property tax law.

§ 11-245.2 Exemption for real property of certain water-works corporations. Real property owned by a water-works corporation subject to the provisions of the public service law and used exclusively for the sale, furnishing and distribution of water for domestic, commercial and public purposes, shall not be taxable.

§ 11-245.3 Exemption for persons sixty-five years of age or over. 1. Real property owned by one or more persons, each of whom is sixty-five years of age or over, or real property owned by husband and wife or by siblings, one of whom is sixty-five years of age or over, or real property owned by one or more persons, some of whom qualify under this section and section 11-245.4 of this part shall be exempt from taxes on real estate to the extent of fifty per centum of the assessed valuation thereof. For the purposes of this section, siblings shall mean a brother or a sister, whether related through halfblood, whole blood or adoption.

2. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.

3. No exemption shall be granted:

(a) if the income of the owner or the combined income of the owners of the property exceeds the sum of twenty-six thousand dollars beginning July first, two thousand six, twenty-seven thousand dollars beginning July first, two thousand seven, twenty-eight thousand dollars beginning July first, two thousand eight, twenty-nine thousand dollars beginning July first, two thousand nine, and fifty thousand dollars beginning July first, two thousand seventeen for the income tax year immediately preceding the date of making application for exemption. Income tax year shall mean the twelve-month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife, or ex-husband or ex-wife is absent from the property as provided in subparagraph (ii) of paragraph (d) of this subdivision, then only the income of the spouse or ex-spouse residing on the property shall be considered and may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include gifts, inheritances, a return of capital, payments made to individuals because of their status as victims of Nazi persecution as defined in P.L. 103-286, monies earned through employment in the federal foster grandparent program, and veterans disability compensation as defined in title 38 of the United States Code, and any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income.

(b) unless the title of the property shall have been vested in the owner or one of the owners of the property for at least twelve consec-

utive months prior to the date of making application for exemption, provided, however, that in the event of the death of either husband or wife in whose name title of the property shall have been vested at the time of death and then becomes vested solely in the survivor by virtue of devise by or descent from the deceased husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months, and provided further, that in the event of a transfer by either husband or wife to the other spouse of all or part of the title to the property, the time of ownership of the property by the transferer spouse shall be deemed also a time of ownership by the transferee spouse and such ownership shall be deemed continuous for the purposes of computing such period of twelve consecutive months, and provided further, that where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceeding, except a tax sale, and where a residence is sold and replaced with another within one year and both are within the state, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption and such periods of ownership shall be deemed to be consecutive for purposes of this section. Where the owner or owners transfer title to property which as of the date of transfer was exempt from taxation under the provisions of this section, the reacquisition of title by such owner or owners within nine months of the date of transfer shall be deemed to satisfy the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months. Where, upon or subsequent to the death of an owner or owners, title to property which as of the date of such death was exempt from taxation under such provisions, becomes vested, by virtue of devise or descent from the deceased owner or owners, or by transfer by any other means within nine months after such death, solely in a person or persons who, at the time of such death, maintained such property as a primary residence, the requirement of this paragraph that the title of the property shall have been vested in the owner or one of the owners for such period of twelve consecutive months shall be deemed satisfied;

(c) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section;

(d) unless the property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property; except where, (i) an owner is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, provided that any income accruing to that person shall be income only to the extent that it exceeds the amount paid by such owner, spouse, or co-owner for care in the facility, and provided further, that during such confinement such property is not occupied by other than the spouse or co-owner of such owner; or, (ii) the real property is owned by a husband and/or wife, or an ex-husband and/or an ex-wife, and either is absent from the residence due to divorce, legal separation or abandonment and all other provisions of this section are met provided that

where an exemption was previously granted when both resided on the property, then the person remaining on the real property shall be sixty-two years of age or over.

4. Application for such exemption must be made by the owner, or all of the owners of the property, on forms prescribed by the state board to be furnished by the department of finance and shall furnish the information and must be executed in the manner required or prescribed in such form and shall be filed in the department of finance in the borough in which the real property is located between the fifteenth day of January and the fifteenth day of March. Notwithstanding any other provision of law, any person otherwise qualifying under this section shall not be denied the exemption under this section if he or she becomes sixty-five years of age after the taxable status date and on or before December thirty-first of the same year.

5. At least sixty days prior to the fifteenth day of January the department of finance shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed between the fifteenth day of January and the fifteenth day of March every two years from the year in which such exemption was granted and be approved in order for the exemption to be granted. The department of finance shall, within three days of the completion and filing of the tentative assessment roll, notify by mail any applicant who has included with his application at least one self-addressed, prepaid envelope, of the approval or denial of the application; provided, however, where an applicant has included two such envelopes, the department of finance shall, upon the filing of the application, send by mail, notice of receipt of that application. Where an applicant is entitled to notice of denial provided herein, such notice shall state the reasons for such denial and shall further state that such determination is reviewable in a manner provided by law. Failure to mail any such application form or notices or the failure of such person to receive any or all of the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

6. Any conviction of having made any willful false statement in the application for such exemption shall be punishable by a fine of not more than one hundred dollars and shall disqualify the applicant or applicants from further exemption for a period of five years.

7. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

| Annual Income as of July 1, 2006 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $26,000 but less than $27,000 | 45 per centum |
| $27,000 or more but less than $28,000 | 40 per centum |
| $28,000 or more but less than $29,000 | 35 per centum |
| $29,000 or more but less than $29,900 | 30 per centum |
| $29,900 or more but less than $30,800 | 25 per centum |
| $30,800 or more but less than $31,700 | 20 per centum |
| $31,700 or more but less than $32,600 | 15 per centum |
| $32,600 or more but less than $33,500 | 10 per centum |
| $33,500 or more but less than $34,400 | 5 per centum |

| Annual Income as of July 1, 2007 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $27,000 but less than $28,000 | 45 per centum |
| $28,000 or more but less than $29,000 | 40 per centum |
| $29,000 or more but less than $30,000 | 35 per centum |
| $30,000 or more but less than $30,900 | 30 per centum |
| $30,900 or more but less than $31,800 | 25 per centum |
| $31,800 or more but less than $32,700 | 20 per centum |
| $32,700 or more but less than $33,600 | 15 per centum |
| $33,600 or more but less than $34,500 | 10 per centum |
| $34,500 or more but less than $35,400 | 5 per centum |

| Annual Income as of July 1, 2008 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $28,000 but less than $29,000 | 45 per centum |
| $29,000 or more but less than $30,000 | 40 per centum |
| $30,000 or more but less than $31,000 | 35 per centum |
| $31,000 or more but less than $31,900 | 30 per centum |
| $31,900 or more but less than $32,800 | 25 per centum |
| $32,800 or more but less than $33,700 | 20 per centum |
| $33,700 or more but less than $34,600 | 15 per centum |
| $34,600 or more but less than $35,500 | 10 per centum |
| $35,500 or more but less than $36,400 | 5 per centum |

| Annual Income as of July 1, 2009 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $29,000 but less than $30,000 | 45 per centum |
| $30,000 or more but less than $31,000 | 40 per centum |
| $31,000 or more but less than $32,000 | 35 per centum |
| $32,000 or more but less than $32,900 | 30 per centum |
| $32,900 or more but less than $33,800 | 25 per centum |
| $33,800 or more but less than $34,700 | 20 per centum |
| $34,700 or more but less than $35,600 | 15 per centum |
| $35,600 or more but less than $36,500 | 10 per centum |
| $36,500 or more but less than $37,400 | 5 per centum |

| Annual Income as of July 1, 2017 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $50,000 but less than $51,000 | 45 per centum |
| $51,000 or more but less than $52,000 | 40 per centum |
| $52,000 or more but less than $53,000 | 35 per centum |
| $53,000 or more but less than $53,900 | 30 per centum |
| $53,900 or more but less than $54,800 | 25 per centum |
| $54,800 or more but less than $55,700 | 20 per centum |
| $55,700 or more but less than $56,600 | 15 per centum |
| $56,600 or more but less than $57,500 | 10 per centum |
| $57,500 or more but less than $58,400 | 5 per centum |

8. Any exemption provided by this section shall be computed after all partial exemptions allowed by law have been subtracted from the total amount assessed.

9. Exemption from taxation as provided in this section on real property owned by husband and wife, one of whom is sixty-five years of age or older, once granted, shall not be rescinded solely because of the death of the older spouse so long as the surviving spouse is at least sixty-two years of age.

10. a. For the purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder. That proportion of the assessment of real property owned by a cooperative apartment corporation, determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides, shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the department of finance against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder. Each cooperative apartment corporation shall notify each tenant-stockholder in residence thereof of such provisions as are set forth in this section.

b. Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article two, four, five or eleven of the private housing finance law and who is eligible for a rent increase exemption pursuant to chapter seven of title twenty-six of the code of the preceding municipality shall not be eligible for an exemption pursuant to this subdivision. Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article two, four, five or eleven of the private housing finance law and who is not eligible for a rent increase exemption pursuant to chapter seven of title twenty-six of this code but who meets the requirements for eligibility for an exemption pursuant to this section shall be eligible for such exemption provided that such exemption shall be in an amount determined by multiplying the exemption otherwise allowable pursuant to this section by a fraction having a numerator equal to the amount of real property taxes or payments in lieu of taxes that were paid with respect to such dwelling and a denominator equal to the full amount of real property taxes that would have been owed with respect to such dwelling had it not been granted an exemption or abatement of real property taxes pursuant to any provision of law, provided, however, that any reduction in real property taxes received with respect to such dwelling pursuant to chapter seven of title twenty-six of this code or pursuant to this section shall not be considered in calculating such numerator. Any tenant-stockholder who resides in a dwelling which was or continues to be subject to a mortgage insured or initially insured by the federal government pursuant to section two hundred thirteen of the national housing act, as amended, and who is eligible for both a rent increase exemption pursuant to chapter seven of title twenty-six of this code and an exemption pursuant to this subdivision, may apply for and receive either a rent increase exemption pursuant to such chapter or an exemption pursuant to this subdivision, but not both.

11. Exemption Option. Notwithstanding any provision of this part to the contrary, real property owned by one or more persons where one of such owners qualifies for a real property tax exemption pursuant to this section or section 11-245.4 of this part, and another of such owners qualifies for a different tax exemption pursuant to such sections of this part as authorized by state law, such owners shall have the option of choosing the one exemption which is most beneficial to such owners. Such owners shall not be prohibited from taking one such exemption solely on the basis that such owners qualify for more than one exemption and therefore are not eligible for any exemptions.

§ 11-245.4 Exemption for persons with disabilities. 1. (a) Real property owned by one or more persons with disabilities, or real property owned by a husband, wife, or both, or by siblings, at least one of whom has a disability, or real property owned by one or more persons, some of whom qualify under this section and section 11-245.3 of this part, and whose income, as hereafter defined, is limited by reason of such disability, shall be exempt from taxes on real estate to the extent of fifty per centum of the assessed valuation thereof as hereinafter provided. For purposes of this section, sibling shall mean a brother or a sister, whether related through half blood, whole blood or adoption.

(b) For purposes of this section, a person with a disability is one who has a physical or mental impairment, not due to current use of alcohol or illegal drug use, which substantially limits such person's ability to engage in one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, and who (i) is certified to receive social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal social security act, or (ii) is certified to receive railroad retirement disability benefits under the federal railroad retirement act, or (iii) has received a certificate from the state commission for the blind and visually handicapped stating that such person is legally blind, or (iv) is certified to receive a United States postal service disability pension. An award letter from the social security administration or the railroad retirement board or a certificate from the state commission for the blind and visually handicapped or an award letter from the United States postal service shall be submitted as proof of disability.

2. Exemption from taxation for school purposes shall not be granted in the case of real property where a child resides if such child attends a public school of elementary or secondary education.

3. No exemption shall be granted:

(a) if the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds the sum of twenty-six thousand dollars beginning July first, two thousand six, twenty-seven thousand dollars beginning July first, two thousand seven, twenty-eight thousand dollars beginning July first, two thousand eight, twenty-nine thousand dollars beginning July first, two thousand nine, and fifty thousand dollars beginning July first, two thousand seventeen. Income tax year shall mean the twelve-month period for which the owner or owners filed a federal personal income tax return, or if no such return is filed, the calendar year. Where title is vested in either the husband or the wife, their combined income may not exceed such sum, except where the husband or wife, or ex-husband or ex-wife is absent from the property due to divorce, legal separation or abandonment, then only the income of the spouse or ex-spouse residing on the property shall be considered and may

not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, total gain from the sale or exchange of a capital asset which may be offset by a loss from the sale or exchange of a capital asset in the same income tax year, net rental income, salary or earnings, and net income from self-employment, but shall not include a return of capital, gifts, inheritances or monies earned through employment in the federal foster grandparent program and any such income shall be offset by all medical and prescription drug expenses actually paid which were not reimbursed or paid for by insurance. In computing net rental income and net income from self-employment no depreciation deduction shall be allowed for the exhaustion, wear and tear of real or personal property held for the production of income;

(b) unless the property is used exclusively for residential purposes, provided, however, that in the event any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be entitled to the exemption provided by this section;

(c) unless the real property is the legal residence of and is occupied in whole or in part by the disabled person; except where the disabled person is absent from the residence while receiving health-related care as an inpatient of a residential health care facility, as defined in section twenty-eight hundred one of the public health law, provided that any income accruing to that person shall be considered income for purposes of this section only to the extent that it exceeds the amount paid by such person or spouse or sibling of such person for care in the facility.

4. Application for such exemption must be made annually by the owner, or all of the owners of the property, on forms prescribed by the state board, and shall be filed with the department of finance on or before the fifteenth day of March of the appropriate year; provided, however, proof of a permanent disability need be submitted only in the year exemption pursuant to this section is first sought or the disability is first determined to be permanent.

5. At least sixty days prior to the fifteenth day of March of the appropriate year, the department of finance shall mail to each person who was granted exemption pursuant to this section on the latest completed assessment roll an application form and a notice that such application must be filed on or before the fifteenth day of March and be approved in order for the exemption to continue to be granted. Failure to mail such application form or the failure of such person to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on property owned by such person.

6. Notwithstanding the maximum income exemption eligibility level provided in subdivision three of this section, an exemption, subject to all other provisions of this section, shall be granted as indicated in the following schedule:

| Annual Income as of July 1, 2006 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $26,000 but less than $27,000 | 45 per centum |
| $27,000 or more but less than $28,000 | 40 per centum |
| $28,000 or more but less than $29,000 | 35 per centum |
| $29,000 or more but less than $29,900 | 30 per centum |
| $29,900 or more but less than $30,800 | 25 per centum |

| | |
|---|---|
| $30,800 or more but less than $31,700 | 20 per centum |
| $31,700 or more but less than $32,600 | 15 per centum |
| $32,600 or more but less than $33,500 | 10 per centum |
| $33,500 or more but less than $34,400 | 5 per centum |

| Annual Income as of July 1, 2007 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $27,000 but less than $28,000 | 45 per centum |
| $28,000 or more but less than $29,000 | 40 per centum |
| $29,000 or more but less than $30,000 | 35 per centum |
| $30,000 or more but less than $30,900 | 30 per centum |
| $30,900 or more but less than $31,800 | 25 per centum |
| $31,800 or more but less than $32,700 | 20 per centum |
| $32,700 or more but less than $33,600 | 15 per centum |
| $33,600 or more but less than $34,500 | 10 per centum |
| $34,500 or more but less than $35,400 | 5 per centum |

| Annual Income as of July 1, 2008 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $28,000 but less than $29,000 | 45 per centum |
| $29,000 or more but less than $30,000 | 40 per centum |
| $30,000 or more but less than $31,000 | 35 per centum |
| $31,000 or more but less than $31,900 | 30 per centum |
| $31,900 or more but less than $32,800 | 25 per centum |
| $32,800 or more but less than $33,700 | 20 per centum |
| $33,700 or more but less than $34,600 | 15 per centum |
| $34,600 or more but less than $35,500 | 10 per centum |
| $35,500 or more but less than $36,400 | 5 per centum |

| Annual Income as of July 1, 2009 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $29,000 but less than $30,000 | 45 per centum |
| $30,000 or more but less than $31,000 | 40 per centum |
| $31,000 or more but less than $32,000 | 35 per centum |
| $32,000 or more but less than $32,900 | 30 per centum |
| $32,900 or more but less than $33,800 | 25 per centum |
| $33,800 or more but less than $34,700 | 20 per centum |
| $34,700 or more but less than $35,600 | 15 per centum |
| $35,600 or more but less than $36,500 | 10 per centum |
| $36,500 or more but less than $37,400 | 5 per centum |

| Annual Income as of July 1, 2017 | Percentage Assessed Valuation Exempt From Taxation |
|---|---|
| More than $50,000 but less than $51,000 | 45 per centum |
| $51,000 or more but less than $52,000 | 40 per centum |
| $52,000 or more but less than $53,000 | 35 per centum |
| $53,000 or more but less than $53,900 | 30 per centum |
| $53,900 or more but less than $54,800 | 25 per centum |
| $54,800 or more but less than $55,700 | 20 per centum |
| $55,700 or more but less than $56,600 | 15 per centum |

| | |
|---|---|
| $56,600 or more but less than $57,500 | 10 per centum |
| $57,500 or more but less than $58,400 | 5 per centum |

7. Any exemption provided by this section shall be computed after all other partial exemptions allowed by law have been subtracted from the total amount assessed; provided, however, that no parcel may receive an exemption pursuant to both this section and section 11-245.3.

8. (a) For purposes of this section, title to that portion of real property owned by a cooperative apartment corporation in which a tenant-stockholder of such corporation resides, and which is represented by his or her share or shares of stock in such corporation as determined by its or their proportional relationship to the total outstanding stock of the corporation, including that owned by the corporation, shall be deemed to be vested in such tenant-stockholder. That proportion of the assessment of such real property owned by a cooperative apartment corporation determined by the relationship of such real property vested in such tenant-stockholder to such entire parcel and the buildings thereon owned by such cooperative apartment corporation in which such tenant-stockholder resides shall be subject to exemption from taxation pursuant to this section and any exemption so granted shall be credited by the department of finance against the assessed valuation of such real property; the reduction in real property taxes realized thereby shall be credited by the cooperative apartment corporation against the amount of such taxes otherwise payable by or chargeable to such tenant-stockholder.

(b) Notwithstanding any other provision of law, a tenant-stockholder who resides in a dwelling which is subject to the provisions of either article two, four, five or eleven of the private housing finance law shall not be eligible for an exemption pursuant to this subdivision.

9. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply to real property held in trust solely for the benefit of a person or persons who would otherwise be eligible for a real property tax exemption, pursuant to subdivision one of this section, were such person or persons the owner or owners of such real property.

10. Exemption Option. Notwithstanding any provision of this part to the contrary, real property owned by one or more persons where one of such owners qualifies for a real property tax exemption pursuant to this section or section 11-245.3 of this part, and another of such owners qualifies for a different tax exemption pursuant to such sections of this part as authorized by state law, such owners shall have the option of choosing the one exemption which is most beneficial to such owners. Such owners shall not be prohibited from taking one such exemption solely on the basis that such owners qualify for more than one exemption and therefore are not eligible for any exemptions.

§ 11-245.45 Exemption for veterans. Pursuant to paragraph (d) of subdivision eight of section four hundred fifty-eight of the real property tax law, the city hereby authorizes real property owned by a cooperative apartment corporation to be exempt from taxation in accordance with such section and any local laws adopted pursuant to such section beginning July first, nineteen hundred ninety-eight.

§ 11-245.46 Exemption for veterans; taxes for school purposes exempted. Pursuant to paragraph three of subdivision one of section four hundred fifty-eight of the real property tax law, the city hereby provides that the exemption authorized pursuant to such section shall be applicable to taxes for school purposes.

§ 11-245.5 Alternative exemption for veterans. Pursuant to paragraph (d) of subdivision six of section four hundred fifty-eight-a of the real property tax law, the city hereby authorizes real property owned by a cooperative apartment corporation to be exempt from taxation in accordance with such section and any local laws adopted pursuant to such section beginning July first, nineteen hundred ninety-eight.

§ 11-245.6 Alternative exemption for veterans; maximum exemptions allowable. Pursuant to subparagraph (ii) of paragraph (d) of subdivision two of section four hundred fifty-eight-a of the real property tax law, the city hereby increases the maximum exemptions allowable in paragraphs (a), (b) and (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law. The maximum exemption allowable in such paragraph (a) shall be fifteen percent of the assessed value of the qualifying residential real property; provided, however, that such exemption shall not exceed forty-eight thousand dollars or the product of forty-eight thousand dollars multiplied by the latest class ratio, whichever is less. In addition to the exemption provided by such paragraph (a), as increased by this section, the maximum exemption allowable in such paragraph (b) shall be ten percent of the assessed value of the qualifying residential real property; provided, however, that such exemption shall not exceed thirty-two thousand dollars or the product of thirty-two thousand dollars multiplied by the latest class ratio, whichever is less. In addition to the exemptions provided by such paragraphs (a) and (b), as increased by this section, the maximum exemption allowable in such paragraph (c) shall be the product of the assessed value of the qualifying residential real property multiplied by fifty percent of the veteran's disability rating; provided, however, that such exemption shall not exceed one hundred sixty thousand dollars or the product of one hundred sixty thousand dollars multiplied by the latest class ratio, whichever is less. The maximum exemptions allowable in such paragraphs (a), (b) and (c), as increased by this section, shall not apply to any assessment roll completed and filed prior to the first day of January, two thousand six.

§ 11-245.7 Alternative exemption for veterans; gold star parent. Pursuant to paragraph (b) of subdivision seven of section four hundred fifty-eight-a of the real property tax law, and in accordance with such section and any local laws adopted pursuant thereto, the city hereby includes a gold star parent within the definition of "qualified owner" as provided in paragraph (c) of subdivision one of such section, and includes property owned by a gold star parent within the definition of "qualifying residential real property" as provided in paragraph (d) of subdivision one of such section, provided that such property is the primary residence of the gold star parent.

§ 11-245.75 Alternative exemption for veterans; school district taxation exempted. Pursuant to subparagraph (i) of paragraph (d) of subdivision two of section four hundred fifty-eight-a of the real property tax law, the city hereby provides that the exemptions allowable in paragraphs (a), (b) and (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law shall be applicable to school district taxation.

§ 11-245.8 ENERGY STAR appliances. a. For the purposes of this section, the following definitions shall apply in conjunction with the definitions found in sections 27-232 and 27-2004 of this code:

(1) The term "ENERGY STAR" shall mean a designation from the United States environmental protection agency or department of energy indicat-

ing that a product meets the energy efficiency standards set forth by the agency for compliance with the ENERGY STAR program.

(2) The term "household appliance" shall mean any refrigerator, room air conditioner, dishwasher or clothes washer, within a dwelling unit in a multiple dwelling that is provided by the owner of such multiple dwelling. This definition shall also include any boiler or furnace that provides heat or hot water for any dwelling unit in a multiple dwelling.

b. For any building for which any benefit is conferred pursuant to four hundred eighty-nine of the real property tax law, whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in a multiple dwelling, is installed or replaced with a new household appliance, such new appliance shall be certified as Energy Star.

c. For any building for which any benefit is conferred pursuant to section four hundred twenty-one-a of the real property tax law, whenever any household appliance in any dwelling unit, or any household appliance that provides heat or hot water for any dwelling unit in a multiple dwelling, is installed or replaced with a new household appliance, such new appliance shall be certified as Energy Star.

d. The commissioner may enact rules requiring additional energy conservation measures for any building for which any benefit is conferred pursuant to section four hundred eighty-nine of the real property tax law or section four hundred twenty-one-a of the real property tax law.

e. The commissioner shall inform applicants for any benefits affected by this section of the requirements of this section.

f. The requirements of subdivisions b and c of this section shall not apply where:

1) an ENERGY STAR certified household appliance of appropriate size is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance; or

2) an ENERGY STAR certified boiler or furnace of sufficient capacity is not manufactured.

§ 11-245.9 Notice of residential property tax exemptions. a. The commissioner of finance, or his or her designee, shall provide a notice relating to the lien sale process to all property owners included with the notice of value sent to property owners by the department of finance and, in addition, no later than October thirty-first of each year, to any property owner who is delinquent in the payment of any real property taxes, assessments, or any other charges that are made a lien subject to the provisions of chapter three of this title, except sewer rents, sewer charges and water rents, if such delinquency, in the aggregate, equals or exceeds the sum of one thousand dollars. This notice shall include, but not be limited to, actions homeowners can take if a lien is sold on such property; the type of debt that can be sold in a lien sale; a timeline of statutory notifications required pursuant to section 11-320 of this title; a clear, concise explanation of the consequences of the sale of a tax lien; the telephone number and electronic mail address of the employee or employees designated pursuant to subdivision f of section 11-320 of this title; a conspicuous statement that an owner of any class of property may enter into a payment plan for the satisfaction of delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents, and any other charges that are made a lien subject to the provisions of chapter three of this title, or exclusion from the tax lien sale; credits and property tax exemptions that may exclude certain class one real property from a tax lien sale; and clear and concise

instructions on how an owner of any class of property may register to receive information from the department, through electronic mail, regarding outreach sessions relating to the sale of tax liens conducted pursuant to subdivision j of section 11-320 of this title. Such notice shall also include information on the following real property tax credits or real property tax exemptions:

1. the senior citizen homeowner exemption pursuant to section 11-245.3 of this part;

2. the exemption for persons with disabilities pursuant to section 11-245.4 of this part;

3. the exemptions for veterans pursuant to sections four hundred fifty-eight and four hundred fifty-eight-a of the real property tax law;

4. the school tax relief (STAR) exemption pursuant to section four hundred twenty-five of the real property tax law;

5. the enhanced school tax relief (STAR) exemption pursuant to subdivision four of section four hundred twenty-five of the real property tax law;

6. the state circuit breaker income tax credit pursuant to subsection (e) of section six hundred six of the tax law; and

7. any other credit or residential real property tax exemption, which, in the discretion of the commissioner, should be included in such notice.

Upon such property owner's written request, or verbal request to 311 or any employee designated pursuant to subdivision f of section 11-320 of this title, a Chinese, Korean, Russian or Spanish translation of such notice shall be provided promptly to such property owner.

b. The notice required pursuant to this section shall include:

1. a brief description of each exemption program; and

2. a phone number at the department and a website address where taxpayers can obtain additional information on the exemption programs and all necessary forms and applications.

c. The notice that is required, pursuant to this section, to be provided by the commissioner of finance or his or her designee no later than October thirty-first of each year shall include contact information for the office of financial empowerment at the department of consumer and worker protection.

§ 11-245.10 Alternative exemption for veterans; transfer of title. 1. Pursuant to subdivision eight of section four hundred fifty-eight-a of the real property tax law, where a veteran, the spouse of a veteran or unremarried surviving spouse already receiving an exemption pursuant to such section sells the property receiving such exemption and purchases property within the city, the department of finance shall transfer and prorate, for the remainder of the fiscal year, the exemption received. The prorated exemption shall be based upon the date the veteran, the spouse of the veteran or unremarried surviving spouse obtains title to the new property and shall be calculated by multiplying the tax rate for which taxes were levied, on the appropriate tax roll used for the fiscal year during which the transfer occurred, multiplied by the previously granted exempt amount, multiplied by the fraction of each fiscal year remaining subsequent to the transfer of title.

2. Nothing in this section shall be construed to remove the requirement that any such veteran, the spouse of the veteran or unremarried surviving spouse transferring an exemption pursuant to subdivision one of this section shall reapply for the exemption authorized pursuant to section four hundred fifty-eight-a of the real property tax law on or before the following taxable status date, in the event such veteran, the

spouse of the veteran or unremarried surviving spouse wishes to receive the exemption in future fiscal years.

PART 2
EXEMPTION FOR CERTAIN NONPROFIT ORGANIZATIONS

§ 11-246 Taxation of property of nonprofit organizations, pharmaceutical societies and dental societies. 1. a. Pursuant to the requirements of sections four hundred twenty-a and four hundred forty-six of the real property tax law, real property owned by a corporation or association which is organized or conducted exclusively for religious, charitable, hospital, educational or cemetery purposes, or for the purposes of the moral or mental improvement of men, women or children or for two or more such purposes shall not be taxable.

b. Real property owned by a corporation or association which is organized or conducted exclusively for Bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, library, patriotic or historical purposes, for the development of good sportsmanship for persons under the age of eighteen years through the conduct of supervised athletic games, or for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association, or by another such corporation or association as provided in section four hundred twenty-b of the real property tax law shall not be taxable. Any corporation or association which uses real property exempted from taxation pursuant to this paragraph shall make available to the council, the commissioner of finance and the public a report, in such form as may be prescribed by the commissioner of finance, setting forth the efforts of such corporation or association undertaken in the previous calendar year to provide assistance to city programs and city residents, by filing such report with the city clerk not later than June first of each year.

c. Real property owned by a corporation or association which is organized or conducted exclusively for bar association or medical society purposes, or both such purposes, and used exclusively for carrying out thereupon one or both such purposes either by the owning corporation or association, or by another such corporation or association shall be taxable pursuant to the authority contained in section four hundred twenty-b of the real property tax law.

2. Real property from which no rent is derived and which is owned by an incorporated pharmaceutical society which is either wholly or partly within the city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish a college of pharmacy in this city shall be taxable.

3. Real property from which no income is derived which is owned by a dental society of any judicial district which judicial district is wholly or partly within the city, which dental society was incorporated under the education law shall be taxable.

4. Real property previously exempt from taxation but made taxable pursuant to this section as of the first of January, nineteen hundred seventy-two shall be taxed for the period from the first of January to and including the thirtieth of June, nineteen hundred seventy-two by applying one-half of the tax rate for the fiscal year nineteen hundred seventy-one, seventy-two to the assessments made and exemptions claimed with reference to the taxable status date falling on the twenty-fifth of

January, nineteen hundred seventy-two. The taxes thus computed for the period from the first of January to and including the thirtieth of June, nineteen hundred seventy-two shall be due and payable on the first of June, nineteen hundred seventy-two.

5. Real property which is taxable under this section shall be subject to any special ad valorem levies and special assessments which are imposed to defray the cost of improvements or services furnished by the city.

§ 11-246.1 Denial; information required. The commissioner of finance shall include, in any written communication with a property owner related to the denial of a real property tax exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law, information on actions a property owner can take, upon notice of a sale of a tax lien of property of such owner, that may prevent the sale of such tax lien.

## PART 3
## TAX EXEMPTION FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-247 Definitions. When used in this part:

a. "Applicant" means any person or corporation obligated to pay real property taxes on the property for which an exemption is sought, or in the case of exempt property, the record owner thereof, provided, however, that such property is not commercial property located in an area designated as excluded pursuant to section 11-249 of this part;

b. "Board" means the industrial and commercial incentive board;

c. "Commercial" means any non-residential property used primarily for the buying, selling or otherwise providing of goods or services, provided that the use of such property has not been designated as a restricted commercial use pursuant to section 11-249 of this part;

d. "Construction" means the building of new industrial or commercial structures on vacant or predominantly vacant land, or the modernization, rehabilitation or expansion or other improvements of an existing commercial structure where such modernization, rehabilitation, expansion or other improvement is not physically or functionally integrated with the existing structure or results in additional usable square footage fifty per centum greater than the square footage of the existing structure;

e. "Industrial" means property used primarily for the manufacturing or assembling of goods or the processing of raw materials;

f. "Predominantly vacant land" means land, including land under water, on which not more than fifteen percent of the lot area contains enclosed, permanent improvements; in addition, such land may include existing foundations. A fence, shed, garage, attendant's booth, paving, pier, bulkhead, lighting fixtures, and similar items, or any improvement having an assessed value of less than two thousand dollars shall not constitute an enclosed, permanent improvement;

g. "Reconstruction" means the modernization, rehabilitation, expansion or other improvement of an existing commercial or industrial structure where the total proposed project cost is in an amount equal to at least twenty per centum of the assessed value of the property at the time an application for a certificate of eligibility pursuant to this part is made, and where such modernization, rehabilitation, expansion or other improvement is physically and functionally integrated with the existing structure and does not create additional usable square footage greater

than fifty per centum of the usable square footage of the existing structure except in a case where the existing structure has been substantially destroyed by fire or other casualty;

h. "Residential property" shall mean property, other than property used for hotel purposes, on which will exist upon completion of construction a building or structure containing more than one independent dwelling unit or where more than one-third of the total square footage of said structure is to be used for residential purposes; it shall also mean, in the case of reconstruction, property on which exists or will exist upon completion of the reconstruction a building or structure where more than one-third of the total square footage is used or is to be used for dwelling purposes;

i. "Vacant land" means land, including land under water, which contains no enclosed, permanent improvement. A fence, shed, garage, attendant's booth, paving, pier, bulkhead, lighting fixtures, and similar items, or any improvement having an assessed value of less than two thousand dollars shall not constitute an enclosed, permanent improvement.

§ 11-248 Industrial and commercial incentive board. There shall be an industrial and commercial incentive board to consist of the deputy mayor who shall be chairperson of the board, the commissioner of finance, the director of planning and the director of budget, each of whom shall have the power to designate an alternate to represent him or her at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation be in writing to the chairperson of the board, and three other members to be appointed by the mayor. The members of the board who shall be agents, officers, or employees of the city shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. The members of the board who are not agents, officers, or employees of the city shall receive as compensation for their services one hundred dollars per diem, provided, however, that the total compensation paid to any such member shall not exceed twelve hundred dollars for any calendar year. Four members of the board shall constitute a quorum.

§ 11-249 Functions, powers and duties of the board; annual designation of exemption areas and restricted commercial uses. a. The members of the board shall have the following functions, powers and duties:

1. to receive and review applications for certificates of eligibility pursuant to the charter and pursuant to subdivision thirteen of section 11-604 and subdivision (e) of section 11-503 of this title;

2. to make findings and determinations on the qualifications of applicants for certificates of eligibility pursuant to this part and subdivision (e) of section 11-503 of this title;

3. to issue certificates of eligibility and amendments thereto;

4. to make recommendations to the tax commission on the termination of a tax exemption pursuant to section 11-253 of this part;

5. to designate annually, pursuant to subdivision b of this section, areas in which exemptions for commercial construction or reconstruction shall be granted as of right, areas from which such exemptions shall be excluded and commercial uses for which the granting of exemptions shall be restricted; and

6. to make and promulgate rules and regulations to carry out the purposes of the board.

b. (1) Not later than October first of each year the board shall publish a notice at least once in the official paper or a newspaper of general circulation in the city setting forth: (i) the proposed boundaries of areas in which commercial construction or reconstruction shall be granted exemptions as of right, proposed boundaries of areas from which exemptions for commercial construction or reconstruction shall be excluded and proposed restricted commercial uses; and (ii) the date, not earlier than ten nor later than thirty days following the publication of such notice, on which the board will hold a public hearing to hear all persons interested in the designation of such boundaries and restricted commercial uses.

(2) Not earlier than ten nor later than thirty days following the conclusion of the public hearing provided for in paragraph one of this subdivision, the board shall designate the boundaries of areas in which exemptions for commercial construction or reconstruction shall be granted as of right and areas from which such exemptions shall be excluded and shall also designate restricted commercial uses. Such designations shall be made upon the following determinations:

(i) With respect to areas in which exemption for commercial construction or reconstruction shall be granted as of right, the board shall determine that market conditions in each area are such that exemptions are required to attract commercial construction or reconstruction to the area and that attracting such construction or reconstruction, and the granting of exemptions therefor, are in the public interest. In making such determination, the board may consider, among other factors, that the area is experiencing economic distress or is characterized by an unusually large number of vacant, underutilized, unsuitable or substandard structures, or by other substandard, unsanitary, deteriorated or deteriorating conditions, with or without tangible blight, or that commercial development in the area will be beneficial to the city's economy.

(ii) With respect to areas from which exemptions for commercial construction or reconstruction are to be excluded, the board shall determine that market conditions in each area are such that exemptions are not required to attract commercial construction or reconstruction to the area, or that it is not in the public interest to grant exemptions for commercial construction or reconstruction in the area. No applications for exemptions for commercial construction or reconstruction shall be accepted from such areas.

(iii) With respect to restricted commercial uses, the board shall determine that it is not in the public interest to grant exemptions for such uses unless the board further determines that in certain areas designated pursuant to this subdivision, such uses will have an especially positive impact on the area's economy. All applications for exemptions for restricted commercial uses shall be determined pursuant to paragraphs two and three of subdivision b of section 11-251 of this part.

(3) Designations made pursuant to this subdivision shall be effective on the first of January of each year.

c. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the board for the carrying out of the functions stated in this part. The head of any department or agency shall furnish information in the possession of such department or agency when the board, after consultation with the mayor, so requests.

§ 11-250 Real property tax exemption. a. A real property tax exemption pursuant to this part shall be granted to an applicant who, within a period of thirty-six months, or following an extension pursuant to section 11-254 of this part within a period of forty-eight months, from the date of issuance of a certificate of eligibility has completed reconstruction or construction work in accordance with the plans approved by the board in the certificate of eligibility. The amount of the tax exemption shall be determined as follows:

(1) In the case of an applicant who has completed industrial construction or reconstruction work, or commercial reconstruction work designated as of right pursuant to section 11-249 of this part or as specially needed pursuant to section 11-251 of this part, the tax exemption shall continue for nineteen tax years in an amount decreasing by five per centum each year from an exemption of ninety-five per centum of the exemption base, as defined in paragraph four of this subdivision.

(2) In the case of an applicant who has completed other commercial reconstruction work, or new commercial construction work designated as of right pursuant to section 11-249 of this part or as specially needed pursuant to section 11-251 of this part, the tax exemption shall continue for ten tax years, in an amount decreasing by five per centum each year from an exemption of fifty per centum of the exemption base.

(3) In the case of an applicant who has completed other new commercial construction work, the exemption shall continue for five tax years in an amount decreasing by ten per centum each year from an exemption of fifty per centum of the exemption base.

(4) The term "exemption base" shall mean the difference between the final assessed value of the property as determined upon completion of the construction or reconstruction work and the lesser of (i) the assessed value of the property at the time an application for certificate of eligibility pursuant to this part is made, or (ii) the assessed value as may thereafter be reduced pursuant to application to the tax commission.

The tax exemption shall be computed according to the following tables:

CONSTRUCTION OR RECONSTRUCTION OF INDUSTRIAL STRUCTURES OR RECONSTRUCTION OF AS OF RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

| Year following completion of work | Percentage of exemption |
|---|---|
| 1 | 95 |
| 2 | 90 |
| 3 | 85 |
| 4 | 80 |
| 5 | 75 |
| 6 | 70 |
| 7 | 65 |
| 8 | 60 |
| 9 | 55 |
| 10 | 50 |
| 11 | 45 |
| 12 | 40 |
| 13 | 35 |

| | |
|---|---|
| 14 | 30 |
| 15 | 25 |
| 16 | 20 |
| 17 | 15 |
| 18 | 10 |
| 19 | 5 |

RECONSTRUCTION OF OTHER COMMERCIAL STRUCTURES OR CONSTRUCTION OF AS OF RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

| Year following completion of work | Percentage of exemption |
|---|---|
| 1 | 50 |
| 2 | 45 |
| 3 | 40 |
| 4 | 35 |
| 5 | 30 |
| 6 | 25 |
| 7 | 20 |
| 8 | 15 |
| 9 | 10 |
| 10 | 5 |

CONSTRUCTION OF OTHER NEW COMMERCIAL STRUCTURES

| Year following completion of work | Percentage of exemption |
|---|---|
| 1 | 50 |
| 2 | 40 |
| 3 | 30 |
| 4 | 20 |
| 5 | 10 |

b. The taxes payable during the period from the issuance of a certificate of eligibility to the approval of the tax exemption pursuant to section 11-252 of this part shall be paid on the lesser of:

(1) the assessed value of the property at the time an application for a certificate of eligibility pursuant to this part is made, or

(2) the assessed value as may thereafter be reduced pursuant to application to the tax commission, provided, however, that if reconstruction or construction is not completed in accordance with the plans approved in the certificate of eligibility including any amendments thereto, taxes shall be due and payable retroactively as otherwise required by law.

c. In all cases where the board shall have issued a certificate of eligibility prior to January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the

assessed valuation of the property during the tenure of the exemption. Where the board has issued a certificate of eligibility on or after January first, nineteen hundred eighty-two, the exemption percentage shall apply to any subsequent increase in the assessed valuation of the property during the first two years after approval of the tax exemption pursuant to section 11-252 of this part. Commencing two years after approval of the tax exemption pursuant to section 11-252 of this part, the exemption percentage shall apply to any subsequent increase in assessed valuation of the property only to the extent such increase is attributable to the construction or reconstruction work approved in the certificate of eligibility.

d. The provisions of this part shall not apply to any increase in assessed value resulting from the construction or reconstruction of a residential structure on any property receiving an exemption under the provisions of this part. The provisions of this part shall apply exclusively to those structures and the lands underlying them which were identified explicitly in the certificate of eligibility.

e. The provisions of this part shall not apply if any new or rehabilitated construction displaces or replaces a building or buildings containing more than twenty-five occupied dwelling units in existence on the date an application for certificate of eligibility is submitted for preliminary approval pursuant to section 11-251 of this part, which are administered under the local emergency housing rent control act, the rent stabilization law of nineteen hundred sixty-nine or the emergency tenant protection act of nineteen seventy-four, or their successor statutes applicable to the city of Staten Island, unless a certificate of eviction has been issued for any of the displaced or replaced units pursuant to the powers granted by the city rent and rehabilitation law.

f. The provisions of this part shall not apply to an applicant who has commenced construction or reconstruction work prior to the granting of a certificate of eligibility except where applicant, having filed an application for a certificate of eligibility, receives written permission to commence from the board or its designated representative prior to the granting of a certificate of eligibility. Demolition of existing structures, site preparation limited to grading, filling or clearing, or the curing of a safety or sanitary hazard shall not be deemed to be commencement of construction or reconstruction work.

g. Any property enjoying the benefits of a tax exemption approved by the board shall be ineligible for any subsequent or additional tax exemption pursuant to the provisions of this part until the expiration of the original exemption period or earlier termination of the existing exemption by action of the tax commission.

§ 11-251 Applications for certificates of eligibility. a. Applications for a certificate of eligibility pursuant to this part shall be submitted for preliminary approval to the office for economic development commencing immediately after March first, nineteen hundred eighty-two and continuing until the thirty-first of January, nineteen hundred eighty-six, on such form or forms as shall be prescribed by the board. In addition to any other information required by the board, the application shall include plans for reconstruction or construction that have been certified by a professional engineer or an architect of the applicant's choice and cost estimates or bids for the proposed reconstruction or construction. Upon a finding by such office that the application satisfies the requirements of reconstruction or construction as defined in this part, the application shall be presented to the board for evalu-

ation and written notice thereof shall be given to the community board of the district in which the application site is located.

b. (1) In the case of an application for construction or reconstruction of an industrial structure or a commercial structure located in an area designated as of right, the board shall issue a certificate of eligibility upon determining that the application satisfies the requirements of construction or reconstruction as defined in this part, that the applicant has obtained plans for construction or reconstruction certified by a professional engineer or architect, and that the applicant has otherwise complied with the provisions of this part and other applicable provisions of law.

(2) In the case of an application for construction or reconstruction of a commercial structure not located in an as of right area, or involving a restricted commercial use, the board shall issue a certificate of eligibility upon making the determination specified in paragraph one of this subdivision and upon making the further determination that the granting of a tax exemption for the construction or reconstruction of such a structure in the proposed location is in the public interest. In making such determination, the board shall make findings that there is a need in the area for the services the enterprise will provide, that the enterprise will generate or retain employment in the area, and that a tax incentive is required to attract construction or reconstruction of such a structure to the area. In addition, the board shall consider the economic impact such commercial structure will have in the area.

(3) In the case of an application for construction or reconstruction of a commercial structure not located in an as of right area, or involving a restricted commercial use, the board may make a further determination that special circumstances warrant designating the proposed construction or reconstruction as "specially needed". In making such determination, the board shall make findings that the commercial services to be provided will have an especially positive impact on the area's or the city's economy and that the applicant has demonstrated that the project cannot go forward without the greater exemption granted by such designation.

c. Any meeting of the board at which an application for a certificate of eligibility is to be considered shall be open to the public, and notice of such meeting shall be given at least two weeks prior thereto by publication in a newspaper of general circulation within the city.

d. The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting a tax exemption pursuant to this part have been satisfied, and the board shall have the authority to require that statements made in consideration of the application be taken under oath.

e. After the issuance of a certificate of eligibility the applicant shall apply to the city tax commission, during the period provided by law for filing applications for corrections of assessed valuations, for a tax exemption as provided for in section 11-250 of this part. The application shall be accompanied by a copy of the certificate of eligibility.

§ 11-252 Approval of tax exemption. On completion of the reconstruction or construction work the applicant shall notify the board in writing of said completion. The board shall determine the eligibility of the applicant for the tax exemption as provided in section 11-250 of this part and shall notify the tax commission of such determination. If the applicant is determined to be qualified the commission shall approve the tax exemption.

§ 11-253 Continuation of tax exemption; termination of tax exemption. The tax exemption approved by the board shall continue in accordance with this part, provided that the applicant files an annual certificate of continuing use stating that the structure and property continue to be used for the industrial or commercial purposes justifying the issuance of the certificate of eligibility. The certificate of continuing use shall be filed with the tax commission on such form or forms and containing such information as shall be prescribed by the tax commission. The tax commission shall have authority to terminate a tax exemption on failure of an applicant to file an annual certificate of continuing use or on the recommendation of the commissioner of finance who, in reviewing the certificate filed by an applicant, has determined that the structure or property has ceased to be used for the industrial or commercial purposes justifying the issuance of the certificate of eligibility.

§ 11-254 Extension of time for completion. Where an applicant has received a certificate of eligibility but has not completed or will not be able to complete the construction or reconstruction work within thirty-six months, the board shall, upon application, extend to forty-eight months, from the time of issuance of such certificate, the time for completion of the construction or reconstruction work; provided the applicant has completed not less than two-thirds of the work as specified in the certified plans previously filed with the application at the time of such application for extension.

§ 11-255 Prior certificates of eligibility. Any project for which a certificate of eligibility has been approved by the board prior to the enactment of this section shall be eligible for a tax exemption computed according to the tax exemption tables and formulae in effect on the date of such approval.

## PART 4
## TAX EXEMPTION AND DEFERRAL OF TAX PAYMENT FOR CERTAIN INDUSTRIAL AND COMMERCIAL PROPERTIES

§ 11-256 Definitions. When used in this part:

a. "Applicant" means any person obligated to pay real property taxes on the property for which an exemption from or abatement or deferral of real property tax payments is sought, or in the case of exempt property, the record owner or lessee thereof.

b. "Approved plans" means plans submitted to and approved by the department of buildings in connection with the applicant's building permit, including any amendments to such plans approved by such department before final inspection of the work for which such permit was issued.

c. "Benefit period" means the period of time when a recipient is eligible to receive benefits pursuant to this part including in the case of a recipient of a certificate of eligibility for commercial construction work in a deferral area, the period of time when tax payments are to be deferred, the interim period when no tax payments are to be deferred and no deferred tax payments are required to be made, and the period of time when the deferred tax payments are to be made.

d. "Commission" means the temporary commercial incentive area boundary commission.

e. "Commercial construction work" means the construction of a new building or structure, or portion thereof, or the modernization, reha-

bilitation, expansion, or other improvement of an existing building or structure, or portion thereof, for use as commercial property.

f. "Commercial property" means nonresidential property: (1) on which will exist after completion of commercial construction work, a building or structure used for the buying, selling or otherwise providing of goods or services including hotel services, or for other lawful business, commercial or manufacturing activities; and (2) (a) where, except as provided in subparagraph (b) of this paragraph and paragraph (3) of this subdivision, not more than fifteen per centum of the total net square footage of any building or structure on such property was used for manufacturing activities at any one or more times during the twenty-four months immediately preceding the date of application for a certificate of eligibility or (b) where not more than fifteen per centum of the total net square footage of any building or structure on such property was used for manufacturing activities at any one or more times during the sixty months immediately preceding the date of application for a certificate of eligibility if such property is located, in whole or in part, in the area in the borough of Manhattan lying south of the center line of 96th Street; and (3) in the commercial revitalization area, and with respect to an application for a certificate of eligibility filed on or after July first, two thousand, "commercial property" means nonresidential property on which will exist after completion of commercial construction work, a building or structure used for the buying, selling or otherwise providing of goods or services including hotel services, or for other lawful business, commercial or manufacturing activities.

f-1. "Commercial revitalization area" means any district that is zoned C4, C5, C6, M1, M2 or M3 in accordance with the zoning resolution in any area of the city.

g. "Deferral area" means an area in which deferral of payment of real property taxes in accordance with section 11-257 of this part shall be available to a recipient who has performed commercial construction work.

h. "Excluded area" means each area specified in paragraphs (1), (2) and (3) of subdivision d of section 11-258 of this part.

i. "Exemption base". (1) For purposes of computing the exemption pursuant to subdivision a, b, c or d of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of June thirtieth, nineteen hundred ninety-two or before: (a) for the first, second and third taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to commercial or industrial construction work described in approved plans; and (b) for all other years, the assessed value of such improvements which have been made before the fourth taxable status date following the effective date of such certificate.

(2) For purposes of computing the exemption pursuant to subdivision c, d or e of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-two or after: (a) for the first through fifth taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to commercial or renovation construction work described in approved plans; and (b) for all other years, the assessed

value of such improvements which have been made before the sixth taxable status date following the effective date of such certificate.

(3) For purposes of computing the exemption pursuant to subdivision a or b of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-two or after: (a) for the first through fifth taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to commercial or industrial construction work described in approved plans plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the effective date of such certificate; and (b) for all other years, the assessed value of such improvements made before the sixth taxable status date following the effective date of such certificate plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the effective date of such certificate but before the fourteenth taxable status date following the effective date of such certificate. For purposes of the preceding sentence: no adjustment shall be made to the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph for any portion of an equalization increase or decrease which is being phased in pursuant to section eighteen hundred five of the real property tax law subsequent to the effective date of the certificate of eligibility if such increase or decrease occurred prior to such effective date; with respect to any taxable year, an adjustment for an equalization increase or decrease shall reflect only the portion of such increase or decrease which is being phased in during such taxable year or which was phased in during a prior taxable year; no adjustment for an equalization decrease shall reduce the exemption base to an amount less than the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph, and, to the extent that any such decrease would reduce the exemption base below such amount, such decrease shall reduce the taxable portion of the assessed value; and no adjustment shall be made for an equalization increase or decrease if the improvements referred to in subparagraphs (a) and (b) of this paragraph do not result in a physical increase in the assessed value of the property.

(4) Notwithstanding paragraph one of this subdivision, for purposes of computing the exemption pursuant to subdivision a of section 11-257 of this part, "exemption base" shall mean, with respect to industrial property that is located in the area in Staten Island; and that is the subject of a certificate of eligibility with an effective date after December thirty-first, nineteen hundred eighty-nine and before July first, nineteen hundred ninety-two: (a) for the first, second and third taxable years following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to industrial construction work described in approved plans; and (b) for all other years, the assessed value of such improvements made before the fourth taxable status date following the effective date of such certificate plus any equalization increases or minus any equalization decreases in the assessed value of the property so improved (excluding the land) occurring subsequent to the fourth taxable status date following the effective date of such certificate but before the fourteenth taxable status date following the effective date of such certificate. For

purposes of the preceding sentence: no adjustment shall be made to the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph for any portion of an equalization increase or decrease which is being phased in pursuant to section eighteen hundred five of the real property tax law subsequent to the effective date of the certificate of eligibility if such increase or decrease occurred prior to such effective date; with respect to any taxable year, an adjustment for an equalization increase or decrease shall reflect only the portion of such increase or decrease which is being phased in during such taxable year or which was phased in during a prior taxable year; no adjustment for an equalization decrease shall reduce the exemption base to an amount less than the assessed value of the improvements referred to in subparagraphs (a) and (b) of this paragraph, and, to the extent that any such decrease would reduce the exemption base below such amount, such decrease shall reduce the taxable portion of the assessed value; and no adjustment shall be made for an equalization increase or decrease if the improvements referred to in subparagraphs (a) and (b) of this paragraph do not result in a physical increase in the assessed value of the property.

(5) For purposes of computing the exemption: (a) pursuant to subdivision e.1 of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-five or after and that is located in the new construction exemption area specified in paragraph one of subdivision e of section 11-258 of this part: for any taxable year following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part as described in approved plans, provided such improvements are made within thirty-six months of the effective date of such certificate or by December thirty-first, nineteen hundred ninety-nine, whichever is earlier; and (b) pursuant to subdivision e.1 of section 11-257 of this part, "exemption base" shall mean, with respect to property that is the subject of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-five or after and that is located in the new construction exemption area specified in paragraph two of subdivision e of section 11-258 of this part: for any taxable year following the effective date of a certificate of eligibility, the assessed value of improvements made since the effective date of such certificate which are attributable exclusively to the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part as described in approved plans, provided such improvements are made within forty-two months of the effective date of such certificate.

(6) For purposes of this subdivision "equalization increase or decrease" means an increase or decrease in the assessed value of property which is not attributable to construction work, fire, demolition, destruction or other change in the physical characteristics of the property (excluding gradual physical deterioration or obsolescence), or to a change in the description or boundaries of the property.

j. "Industrial construction work" means the construction of a new building or structure or the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property.

k. "Industrial property" means nonresidential property on which will exist after completion of industrial construction work a building or structure wherein at least seventy-five per centum of the total net square footage is used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials.

l. "Initial assessed value" means the lesser of: (1) the taxable assessed value of real property appearing on the books of the annual record of the assessed valuation of real property on the effective date of a recipient's certificate of eligibility; or (2) the assessed value to which such assessment is thereafter reduced pursuant to application to the tax commission or court order. Where the real property is used for both residential and nonresidential purposes on the effective date of such certificate of eligibility, the initial assessed value of such real property, determined as provided in the preceding sentence, shall be apportioned between the residential and nonresidential portions thereof in such manner as shall properly reflect the initial assessed value of each such portion. Such apportionment shall be in accordance with rules promulgated by the department of finance.

m. "Manufacturing activity" means an activity involving the assembly of goods or the fabrication or processing of raw materials.

n. "Minimum required expenditure" means expenditure for commercial, renovation or industrial construction work in an amount equal to twenty per centum of the initial assessed value; provided, however, that with respect to a recipient who filed an application on or after July first, nineteen hundred ninety-five for a certificate of eligibility for industrial construction work or for commercial construction work in a special exemption area or a regular exemption area, minimum required expenditure means expenditure for such work in an amount equal to ten per centum of the initial assessed value; provided, however, that with respect to a recipient who filed an application on or after July first, nineteen hundred ninety-five for a certificate of eligibility for industrial construction work and for the purpose of receiving an abatement of real property taxes in accordance with paragraph (3) of subdivision a of section 11-257 of this part, minimum required expenditure means expenditure for such work in an amount equal to twenty-five per centum of the initial assessed value; and provided further that if the department of finance, after consultation with the deputy mayor for finance and economic development, determines that a greater expenditure is required to encourage significant industrial and commercial development it may establish by rule a higher percentage of initial assessed value, not to exceed fifty per centum thereof, as the minimum required expenditure. Expenditure for residential construction work shall not be included in the minimum required expenditure; provided, however, that for mixed-use property, expenditures for construction work related to the common areas and systems of such property shall be allocated, in accordance with rules promulgated by the department of finance, between the residential and nonresidential portions of the property. If real property was used for both residential and nonresidential purposes on the effective date of the certificate of eligibility, the initial assessed value of such real property, for purposes of this subdivision, shall be the initial assessed value apportioned to the nonresidential portions thereof.

o. "Person" means an individual, corporation, partnership, association, agency, trust, estate, foreign or domestic government or subdivision thereof, or other entity.

p. "Recipient" means an applicant to whom a certificate of eligibility has been issued pursuant to this part, or the successor in interest of such applicant, provided that where a person who has entered into a lease or purchase agreement with the owner or lessee of exempt property has been a co-applicant, such person or the successor in interest of such person shall be the recipient.

q. "Regular exemption area" means an area in which a regular exemption from taxes in accordance with section 11-257 of this part shall be available to a recipient who performs commercial construction work.

r. "Residential construction work" means any construction, modernization, rehabilitation, expansion or improvement of dwelling units other than dwelling units in a hotel.

s. "Residential property" means property, other than property used for hotel purposes, on which exists, or will exist upon completion of construction work, a building or structure used for residential purposes.

t. "Restricted activity" means any entertainment activity which the department of finance has identified in regulations promulgated pursuant to this part as an activity which, in the public interest, should not be encouraged through the benefits of this part.

u. "Special exemption area" means an area in which the commission has determined that a special exemption from real property taxes in accordance with subdivision b of section 11-257 of this part shall be available to a recipient who performs commercial construction work and, in addition, means the area specified in paragraph four of subdivision c of section 11-258 of this part.

v. "Mixed-use property" means property on which exists, or will exist upon completion of construction work, a building or structure used for both residential and nonresidential purposes.

w. "Renovation construction work" means the modernization, rehabilitation, expansion or improvement of an existing building or structure, or portion thereof, for use as commercial property in a renovation exemption area where such modernization, rehabilitation, expansion or improvement is physically and functionally integrated with the existing building or structure, or portion thereof, does not increase the bulk of the existing building or structure by more than thirty per centum and does not increase the height of the existing building or structure by more than thirty per centum.

x. "Renovation exemption area" means the area specified in paragraph (4) of subdivision d of section 11-258 of this part in which a renovation exemption from taxes in accordance with subdivision e of section 11-257 of this part shall be available to a recipient who performs renovation construction work.

y. "New construction exemption areas" means the areas specified in subdivision e of section 11-258 of this part in which an exemption from real property taxes in accordance with subdivision e.1 of section 11-257 of this part shall be available to a recipient who constructs a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part.

§ 11-257 Real property tax exemption; deferral of tax payments. The city shall be divided into six classes of areas as provided in this part and pursuant to designation of areas to be made by the temporary commercial incentive area boundary commission. Within such areas, the following benefits shall be available to qualified recipients:

a. (1) A recipient who, following the effective date of a certificate of eligibility, has performed industrial construction work in any area

of the city shall be eligible for an exemption from real property taxes as follows: For the first thirteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the fourteenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for industrial construction work:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 13 | Tax on 100% of exemption base |
| 14 | Tax on 90% of exemption base |
| 15 | Tax on 80% of exemption base |
| 16 | Tax on 70% of exemption base |
| 17 | Tax on 60% of exemption base |
| 18 | Tax on 50% of exemption base |
| 19 | Tax on 40% of exemption base |
| 20 | Tax on 30% of exemption base |
| 21 | Tax on 20% of exemption base |
| 22 | Tax on 10% of exemption base |

(2) Notwithstanding paragraph one of this subdivision, a recipient who filed an application for a certificate of eligibility for industrial construction work in any area of such city on or after July first, nineteen hundred ninety-five, and who, following the effective date of such certificate of eligibility, has performed such industrial construction work shall be eligible for an exemption from real property taxes as follows: for the first sixteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the seventeenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for industrial construction work pursuant to this paragraph:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 16 | Tax on 100% of exemption base |
| 17 | Tax on 90% of exemption base |
| 18 | Tax on 80% of exemption base |
| 19 | Tax on 70% of exemption base |
| 20 | Tax on 60% of exemption base |
| 21 | Tax on 50% of exemption base |
| 22 | Tax on 40% of exemption base |
| 23 | Tax on 30% of exemption base |
| 24 | Tax on 20% of exemption base |
| 25 | Tax on 10% of exemption base |

(3)(a) A recipient who filed an application for a certificate of eligibility for industrial construction work in any area of such city on or after July first, nineteen hundred ninety-five, and who, following

the effective date of such certificate of eligibility, both commenced and completed such work, shall be eligible for an abatement of real property taxes as follows: for the first tax year immediately following completion of such work, and for the second, third and fourth tax years following completion of such work, the abatement shall equal fifty per centum of the real property tax that was imposed on the property which is the subject of the certificate of eligibility for the tax year immediately preceding the effective date of such certificate of eligibility, provided, however, that if such property was fully or partially exempt from real property taxes during such tax year, then the abatement shall equal fifty per centum of the real property tax that would have been imposed on such property but for such full or partial exemption. For the fifth and sixth tax years, the abatement shall equal forty per centum of such amount; for the seventh and eighth tax years, the abatement shall equal thirty per centum of such amount; for the ninth and tenth tax years, the abatement shall equal twenty per centum of such amount; and for the eleventh and twelfth tax years, the abatement shall equal ten per centum of such amount. Notwithstanding any inconsistent provision of this paragraph, a recipient shall not be eligible for an abatement for the first tax year following completion of such work, unless the recipient submits proof satisfactory to the department of finance that such work was completed on or before the taxable status date for such first tax year no later than thirty days after such taxable status date. Where the recipient fails to submit such proof in accordance with the foregoing sentence, a recipient shall not be eligible for an abatement until the second tax year following completion of such work. In such case, a recipient shall submit proof satisfactory to the department of finance that such work was completed on or before the taxable status date for such first tax year no later than thirty days after the taxable status date for such second tax year. A recipient whose abatement begins in the second tax year following completion of such work shall not thereby have his or her twelve-year benefit period shortened.

The following table shall illustrate the computation of the abatement for industrial construction work pursuant to this paragraph:

| Tax year following completion of industrial construction work: | Amount of abatement: |
|---|---|
| 1 | 50% |
| 2 | 50% |
| 3 | 50% |
| 4 | 50% |
| 5 | 40% |
| 6 | 40% |
| 7 | 30% |
| 8 | 30% |
| 9 | 20% |
| 10 | 20% |
| 11 | 10% |
| 12 | 10% |

(b) If, due to a determination of the department of finance or tax commission of such city or a court, the real property tax imposed on such property for the tax year immediately preceding the effective date of such certificate of eligibility is changed, then any abatement that was granted in accordance with this paragraph prior to such reduction

shall be recalculated and any abatement to be granted in accordance with this paragraph shall be based on the real property tax imposed on such property for the tax year immediately preceding the effective date of such certificate of eligibility, as changed by such determination. The amount equal to the difference between the abatement originally granted and the abatement as so recalculated shall be deducted from any refund otherwise payable or remission otherwise due as a result of a change due to such determination, and any balance of such amount remaining unpaid after making any such deduction shall be paid to the department of finance within thirty days from the date of mailing by the department of finance of a notice of the amount payable. Such amount payable shall constitute a tax lien on such property as of the date of such notice and, if not paid within such thirty-day period, penalty and interest at the rate applicable to delinquent taxes on such property shall be charged and collected on such amount from the date of such notice to the date of payment.

(c) No property which is the subject of a certificate of eligibility pursuant to this part shall receive more than one abatement pursuant to this part and no abatement shall exceed one consecutive twelve-year period as specified in subparagraph (a) of this paragraph.

(d) In no event shall an abatement granted pursuant to this part exceed in any tax year the real property taxes imposed on the property which is the subject of a certificate of eligibility pursuant to this part.

(e) For the purpose of calculating an abatement of real property taxes pursuant to this part, where a tax lot contains more than one building or structure and not all of the buildings or structures comprising such tax lot are the subject of a certificate of eligibility for industrial construction work pursuant to this part, the real property taxes imposed on such tax lot for the year immediately preceding the effective date of such certificate of eligibility shall be apportioned among the buildings, structures and land comprising such tax lot and only such real property taxes as are allocable to the property which is the subject of the certificate of eligibility pursuant to this part shall be abated in accordance with this paragraph. Such apportionment shall be in accordance with rules promulgated by the department of finance.

(f) A recipient who filed an application for a certificate of eligibility for industrial construction work in the commercial revitalization area on or after July first, two thousand, and who, following the effective date of such certificate of eligibility, both commenced and completed such work, shall be eligible for an abatement of real property taxes in accordance with subparagraph (a) of this paragraph, provided, however, that where the total net square footage of the industrial property used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials is less than seventy-five per centum of the total net square footage of the industrial property, the abatement of real property taxes shall be determined in accordance with rules promulgated by the department of finance. Notwithstanding the foregoing sentence, no such abatement shall be allowed where the total net square footage of the industrial property used or immediately available and held out for use for such manufacturing activities after completion of industrial construction work is less than the total net square footage used or immediately available and held out for use for such manufacturing activities before the commencement of such construction work. For purposes of this subparagraph only, the term "industrial construction

work" shall mean the modernization, rehabilitation, expansion or improvement of an existing building or structure for use as industrial property and the term "industrial property" shall mean nonresidential property on which will exist after completion of industrial construction work a building or structure wherein at least twenty-five per centum of the total net square footage is used or immediately available and held out for use for manufacturing activities involving the assembly of goods or the fabrication or processing of raw materials.

b. (1) A recipient who, following the effective date of a certificate of eligibility, has performed commercial construction work in a special exemption area shall be eligible for an exemption from real property taxes as follows: For the first thirteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the fourteenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a special exemption area:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 13 | Tax on 100% of exemption base |
| 14 | Tax on 90% of exemption base |
| 15 | Tax on 80% of exemption base |
| 16 | Tax on 70% of exemption base |
| 17 | Tax on 60% of exemption base |
| 18 | Tax on 50% of exemption base |
| 19 | Tax on 40% of exemption base |
| 20 | Tax on 30% of exemption base |
| 21 | Tax on 20% of exemption base |
| 22 | Tax on 10% of exemption base |

(2) Notwithstanding paragraph one of this subdivision, a recipient who filed an application for a certificate of eligibility for commercial construction work in a special exemption area on or after July first, nineteen hundred ninety-five, and who, following the effective date of such certificate of eligibility, has performed such commercial construction work shall be eligible for an exemption from real property taxes as follows: For the first sixteen tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following nine tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at ninety per centum thereof in the seventeenth tax year and decreasing by ten per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a special exemption area pursuant to this paragraph:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 16 | Tax on 100% of exemption base |
| 17 | Tax on 90% of exemption base |
| 18 | Tax on 80% of exemption base |

19 ..... Tax on 70% of exemption base
20 ..... Tax on 60% of exemption base
21 ..... Tax on 50% of exemption base
22 ..... Tax on 40% of exemption base
23 ..... Tax on 30% of exemption base
24 ..... Tax on 20% on exemption base
25 ..... Tax on 10% of exemption base

c. (1) A recipient who, following the effective date of a certificate of eligibility, has performed commercial construction work in a regular exemption area shall be eligible for an exemption from real property taxes as follows: For the first eight tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the ninth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a regular exemption area:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 8 | Tax on 100% of exemption base |
| 9 | Tax on 80% of exemption base |
| 10 | Tax on 60% of exemption base |
| 11 | Tax on 40% of exemption base |
| 12 | Tax on 20% of exemption base |

(2) Notwithstanding paragraph one of this subdivision, a recipient who filed an application for a certificate of eligibility for commercial construction work in a regular exemption area on or after July first, nineteen hundred ninety-five, and who, following the effective date of such certificate of eligibility, has performed such commercial construction work shall be eligible for an exemption from real property taxes as follows: For the first eleven tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the twelfth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for commercial construction work in a regular exemption area pursuant to this paragraph:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 11 | Tax on 100% of exemption base |
| 12 | Tax on 80% of exemption base |
| 13 | Tax on 60% of exemption base |
| 14 | Tax on 40% of exemption base |
| 15 | Tax on 20% of exemption base |

d. Except as provided in paragraphs two and three of subdivision d of section 11-258 of this part, a recipient who, following the effective

date of a certificate of eligibility, has performed commercial construction work in a deferral area shall be eligible for a deferral of tax payments as follows: For the first three tax years following the effective date of a certificate of eligibility, the tax payment on one hundred per centum of the exemption base shall be deferred. For the following four tax years, the tax payment on a percentage of the exemption base beginning at eighty per centum thereof in the fourth tax year and decreasing by twenty per centum each year shall be deferred. The total amount of tax payments deferred pursuant to this part shall be paid subsequently over the course of ten tax years as follows: Commencing in the eleventh tax year following the effective date of the certificate of eligibility, through and including the twentieth tax year following such effective date, an amount equal to ten per centum of the total amount of tax payments deferred pursuant to this section shall be added to the amount of tax otherwise assessed and payable in each such tax year on the property subject to such deferral.

The following table shall illustrate the computation of deferral and payment of taxes for commercial construction work in a deferral area:

| Tax year following effective date of certificate of eligibility: | Amount of tax payments to be deferred or paid: |
|---|---|
| 1 through 3 | Deferral of tax payment on 100% of the exemption base |
| 4 | Deferral of tax payment on 80% of the exemption base |
| 5 | Deferral of tax payment on 60% of the exemption base |
| 6 | Deferral of tax payment on 40% of the exemption base |
| 7 | Deferral of tax payment on 20% of the exemption base |
| 8 through 10 | No tax payments are to be deferred and no deferred tax payments are required to be made |
| 11 through 20 | Payment each year of 10% of total dollar amount of tax payments deferred pursuant to this part |

e. A recipient who, following the effective date of a certificate of eligibility, has performed renovation construction work in a renovation exemption area shall be eligible for an exemption from real property taxes as follows: For the first eight tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the ninth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for renovation construction work in a renovation exemption area:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 8 | Tax on 100% of exemption base |
| 9 | Tax on 80% of exemption base |
| 10 | Tax on 60% of exemption base |
| 11 | Tax on 40% of exemption base |
| 12 | Tax on 20% of exemption base |

e.1. A recipient who, following the effective date of a certificate of eligibility, constructs a new building or structure that meets the

requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph one, two or three of subdivision e of section 11-258 of this part shall be eligible for an exemption from real property taxes as follows: for the first four tax years, the recipient shall be exempt from taxation on one hundred per centum of the exemption base. For the following four tax years, the recipient shall be exempt from taxation on a percentage of the exemption base beginning at eighty per centum thereof in the fifth tax year and decreasing by twenty per centum of said exemption base each year.

The following table shall illustrate the computation of the exemption for the construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in the new construction exemption area specified in paragraph one, two or three of subdivision e of section 11-258 of this part:

| Tax year following effective date of certificate of eligibility: | Amount of exemption: |
|---|---|
| 1 through 4 | Tax on 100% of exemption base |
| 5 | Tax on 80% of exemption base |
| 6 | Tax on 60% of exemption base |
| 7 | Tax on 40% of exemption base |
| 8 | Tax on 20% of exemption base |

f. There shall be no exemption from or deferral of payment of real property taxes available pursuant to this part to any person who performs commercial or renovation construction work in an excluded area.

g. The benefits of this part shall be granted exclusively for industrial, commercial or renovation construction work described in approved plans. No benefits shall be granted for residential construction work. Any parcel which is partly located in an excluded area shall be deemed to be entirely located in such area.

h. No benefits pursuant to this part shall be granted for work which is the subject of a certificate of eligibility issued pursuant to part three of this subchapter.

§ 11-258 Temporary commercial incentive area boundary commission; classes of area; excluded areas. a. There shall be a temporary commercial incentive area boundary commission to consist of the deputy mayor for economic development and planning, the commissioner of finance, the chair of the city planning commission, the director of management and budget, the borough presidents, the speaker of the city council and a public member appointed by the mayor to serve at the mayor's pleasure. Each member except the public member shall have the power to designate an alternate to represent him or her at commission meetings to exercise all the rights and powers of such member, including the right to vote, provided that such designation be made in writing to the chair of the commission. The deputy mayor for economic development and planning shall be the chair of the commission. Each borough president shall be entitled to vote only on the designation of areas within his or her borough. Commission members who shall be officers or employees of the city shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. Any other commission member shall receive as exclusive compensation for his or her services one hundred dollars per diem, provided, however, that the total compensation paid to any such member shall not exceed twelve hundred dollars

for any calendar year. A majority of members of such commission entitled to vote on a matter shall constitute a quorum for such issue. Decisions shall be made by majority vote of those present entitled to vote on a matter.

b. (1) The commission shall meet in nineteen hundred ninety-two, nineteen hundred ninety-five and nineteen hundred ninety-nine to determine the boundaries of the various areas which it is authorized to designate pursuant to this section. The areas designated by the commission in effect as of December thirty-first, nineteen hundred ninety-one shall remain in effect until the first taxable status date after the city council approves a new designation pursuant to paragraph four of this subdivision.

(2) Not later than October first of each year when areas are to be designated, the commission shall publish notice of proposed boundaries of areas to be designated, and the date, not earlier than five nor later than fifteen days following the publication of such notice, on which the commission will hold a public hearing to hear all persons interested in the designation of areas. The notice required by this paragraph shall be published in the City Record and a newspaper of general circulation in the city, and copies thereof shall be forwarded to each council member and community board.

(3) The commission shall make such designation, and notify the city council of such designation, not later than November first of each year when areas are to be designated. The designation shall be effective as provided in paragraph four of this subdivision.

(4) Within thirty days after the first stated meeting of the city council following the receipt of notice of such designation, the city council may, by majority vote, disapprove such designation. If, within such thirty-day period, the city council fails to act or fails to act by the required vote, the city council shall be deemed to have approved such designation. Such designation shall be effective as of the first taxable status date after the city council approves such designation and shall remain in effect until the first taxable status date after the city council approves a new designation pursuant to this paragraph.

c. (1) The commission may designate any area other than the area lying south of the center line of ninety-sixth street in the borough of Manhattan to be a special exemption area if it determines that market conditions in the area are such that the availability of a special exemption is required in order to encourage commercial construction work in such area. In making such determination, the commission shall consider, among other factors, the existence in such area of a special need for commercial and job development, high unemployment, economic distress or unusually large numbers of vacant, underutilized, unsuitable or substandard structures, or other substandard, unsanitary, deteriorated or deteriorating conditions, with or without tangible blight.

(2) Any area in the city, which the commission has not designated as a special exemption area shall be a regular exemption area.

(3) On or after January first, nineteen hundred ninety-two, the commission shall not designate any area to be either a deferral area or an excluded area, nor shall the commission make any new designation in any urban renewal area designated pursuant to article fifteen of the general municipal law so as to reduce the level of benefits available pursuant to this title in such area.

(4) Notwithstanding any other provision of this part, any area in the city designated as an empire zone in accordance with article eighteen-b of the general municipal law, which the commission has not designated as

a special exemption area, shall be a special exemption area as of July first, nineteen hundred ninety-five or as of the date of the designation of such area as an empire zone, whichever is later.

§ 11-259 Eligibility for benefits. a. A recipient of a certificate of eligibility with an effective date of June thirtieth, nineteen hundred ninety-two or before must make one-half the minimum required expenditure within eighteen months of the effective date of such recipient's certificate of eligibility, and make the minimum required expenditure within thirty-six months of the effective date of such certificate to be eligible to receive the benefits of this part. A recipient of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-two or after must make one-half the minimum required expenditure within thirty months of the effective date of such recipient's certificate of eligibility, and make the minimum required expenditure within sixty months of the effective date of such certificate to be eligible to receive the benefits of this part. Any recipient who shall fail to make such expenditures shall become ineligible and shall pay, with interest, any taxes for which an exemption or deferral was claimed pursuant to this section. This subdivision shall not apply to the recipient of a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in a new construction exemption area.

b. No benefits pursuant to this part shall be granted for construction work on any condominium unit unless such unit is in a building or structure which, if viewed as a whole and as if it were under single ownership, would qualify as commercial or industrial property. The minimum required expenditure applicable to any recipient of a certificate of eligibility for construction work on a condominium unit shall be equal to the minimum expenditure which would apply if a certificate of eligibility were issued for construction work on the entire property where such unit is located. Nothing in this subdivision shall be construed to prevent owners of condominium units in the same property from forming an association to be a recipient. This subdivision shall not apply to any applicant whose property would be, or recipient whose property is, the subject of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-two or after.

c. No benefits pursuant to this part shall be granted for any construction work unless the applicant filed an application for such benefits on or before the date of issuance of a building permit for such work. The requirements of this subdivision may be satisfied where the applicant's architect, contractor or other representative authorized to file the application for such building permit files with the department of finance on behalf of the applicant a preliminary application containing such information as the department of finance shall prescribe by regulation.

d. No benefits pursuant to this part shall be granted to any recipient for construction work on property any part of which is to be used for a restricted activity.

e. No benefits pursuant to this part shall be granted for any construction work unless the applicant shall file, together with the application, an affidavit setting forth the following information:

(1) a statement that within the seven years immediately preceding the date of application for a certificate of eligibility, neither the applicant, nor any person owning a substantial interest in the property as defined in paragraph four of this subdivision, nor any officer, director or general partner of the applicant or such person was finally adjudi-

cated by a court of competent jurisdiction to have violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another state with respect to any building, or was an officer, director or general partner of a person at the time such person was finally adjudicated to have violated such law;

(2) a statement setting forth any pending charges alleging violation of section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction with respect to any building by the applicant or any person owning a substantial interest in the property as defined in paragraph four of this subdivision, or any officer, director or general partner of the applicant or such person; and

(3) a statement that the applicant has posted notice in a conspicuous place at the premises which are the subject of the application and published notice in a newspaper of general circulation in the city, in such form as shall be prescribed by the department of finance, stating that persons having information concerning any violation by the applicant or a person having a substantial interest in the property as defined in paragraph four of this subdivision has violated section two hundred thirty-five of the real property law or any section of article one hundred fifty of the penal law or any similar arson law of another jurisdiction may submit such information to the department of finance to be considered in determining the applicant's eligibility for benefits.

(4) "Substantial interest" as used in this subdivision shall mean ownership and control of an interest of ten per centum or more in a property or of any person owning a property.

f. If any person described in the statement required by paragraph two of subdivision e of this section is finally adjudicated by a court of competent jurisdiction to be guilty of any charge listed in such statement, the recipient shall cease to be eligible for benefits pursuant to this part and shall pay with interest any taxes for which an exemption, abatement or deferral was claimed pursuant to this part.

g. In addition to any other qualifications for exemption from or abatement or deferral of payment of taxes set forth in this part, an applicant must be:

(1) obligated to pay real property tax on the property for which an exemption, abatement or deferral is sought, whether such obligation arises because of record ownership of such property, or because the obligation to pay such tax has been assumed by contract; or

(2) the record owner or lessee of property which is exempt from real property taxation who has entered into an agreement to sell or lease such property to another person. Such person shall be a co-applicant with such owner or lessee.

h. A co-applicant with a public entity shall be an eligible recipient pursuant to this part, provided that for such period as the property which is the subject of the certificate of eligibility is exempt from real property taxation because it is owned or controlled by a public entity no benefits shall be available to such recipient pursuant to this part. Such recipient shall receive benefits pursuant to this part when such property ceases to be eligible for exemption pursuant to other provisions of law, as follows: the recipient shall, commencing with the date such tax exemption ceases, and continuing until the expiration of the benefit period pursuant to this part, receive the benefits to which such recipient is entitled in the corresponding tax year pursuant to this part.

i. (1) No benefits pursuant to this part shall be granted for construction of a new building or structure in a new construction exemption area unless such building or structure meets the requirements set forth in subparagraphs two and three of this paragraph and, in addition, meets at least two of the five requirements set forth in subparagraphs four through eight of this paragraph.

(2) The height of at least fifty per centum of the floors in such building or structure shall be not less than twelve feet, nine inches measured from the top of the slab comprising the floor to the bottom of the slab comprising the ceiling;

(3) Such building or structure shall be served by fiber optic telecommunications wiring and shall contain vertical penetrations for the distribution of fiber optic cabling to individual tenants on each floor;

(4) The total square footage of such building or structure is not less than five hundred thousand gross square feet;

(5) A minimum of two hundred thousand gross square feet or twenty-five per centum of such building or structure is comprised of floors of not less than forty thousand gross square feet;

(6) At least ten per centum of the gross square footage of such building or structure is comprised of floors that contain no more than eight structural columns, excluding any columns within the core or on the periphery of such building or structure;

(7) The electrical capacity of such building or structure is not less than six watts per net square foot;

(8) Emergency backup power sufficient to accommodate a need of six watts per net square foot is available in at least two hundred thousand gross square feet or twenty-five per centum of such building or structure.

j. No benefits pursuant to this part shall be granted for construction work performed pursuant to a building permit issued after July thirty-first, two thousand eight, except that if a building permit is issued on or before July thirty-first, two thousand eight for construction work on a building or structure described in an application for a certificate of eligibility filed on or before June thirtieth, two thousand eight, construction work performed as described in such application pursuant to any additional building permit issued on or after August first, two thousand eight shall be eligible for benefits pursuant to this part in accordance with this subdivision.

(1) Except as provided in paragraph two of this subdivision, all construction work performed pursuant to any such application shall be completed on or before December thirty-first, two thousand thirteen. No benefits shall be granted for construction work performed after such date, and any exemption granted pursuant to this part in relation to property on which such construction work was performed shall not exceed the amount of the exemption in effect for such property on the tax roll for which the taxable status date is January fifth, two thousand fourteen.

(2) All construction work performed pursuant to any such application for the construction of a new building or structure in the new construction exemption area specified in paragraph three of subdivision e of section 11-258 of this part shall be completed in accordance with paragraph four of subdivision i of this section and, if not completed in accordance with such subparagraph, shall not be eligible for benefits pursuant to this part.

(3) For purposes of this subdivision, construction work as described in an application for a certificate of eligibility shall be deemed

completed on the date on which the department of buildings issues a temporary or final certificate of occupancy or, if such construction work does not require the issuance of a certificate of occupancy, the date on which the applicant and the applicant's architect or professional engineer for such construction work submit to the department of finance an affidavit certifying that such construction work has been completed. For purposes of this subdivision, a demolition permit shall be deemed to be a building permit issued for construction work.

§ 11-260 Application for certificate of eligibility. a. Application for a certificate of eligibility pursuant to this part may be made immediately and continuing until June thirtieth, two thousand eight; and provided, further, however, that no benefits pursuant to this part shall be granted for construction work performed pursuant to a building permit issued after July thirty-first, two thousand eight. Such application shall state whether it is for industrial, commercial or renovation construction work, and shall be filed with the department of finance. In addition to any other information required by such department, the application shall include cost estimates or bids for the proposed construction and an affidavit of a professional engineer or architect of the applicant's choice, certifying that detailed plans for the construction work have been submitted to the department of buildings. Such application shall also state that the applicant agrees to comply with and be subject to the rules issued from time to time by the department of finance to secure compliance with all applicable city, state and federal laws or which implement mayoral directives and executive orders designed to ensure equal employment opportunity. Such application shall also certify that all taxes currently due and owing on the property which is the subject of the application have been paid or are currently being paid in timely installments pursuant to written agreement with the department of finance.

b. The burden of proof shall be on the applicant to show by clear and convincing evidence that the requirements for granting an exemption from or abatement or deferral of payment of taxes pursuant to this part have been satisfied. The department of finance shall have the authority to require that statements in connection with the application be made under oath.

c. Upon receipt of an application, the department of finance shall send written notice thereof to the council member representing the district where the proposed construction work is to take place.

d. The department of finance shall issue a certificate of eligibility upon determining that the applicant satisfies the requirements for industrial, commercial or renovation construction work in an area where benefits are available for such work. Such certificate shall state whether such benefits are to be granted for industrial, commercial or renovation construction work, and in which class of area the property is located. The effective date of such certificate, except as provided in paragraph two or paragraph four of subdivision c of section 11-259 of this part, shall be the earlier of (1) the date on which a building permit for the construction work is issued by the department of buildings, or (2) the last day before the effective date of any designation of boundaries by the commission which changes the class of area in which the property is located so as to reduce the level of benefits for commercial construction work on such property. Where the effective date of the certificate of eligibility is July first, nineteen hundred ninety-two or after, the benefits granted for industrial, commercial or renovation construction work pursuant to this part shall be in accord-

ance with the provisions of this part. Where the effective date of the certificate of eligibility is June thirtieth, nineteen hundred ninety-two or before, the benefits granted for industrial or commercial construction work pursuant to this part shall be in accordance with the provisions of this part as it was in effect until June thirtieth, nineteen hundred ninety-two. No recipient whose property is the subject of a certificate of eligibility for commercial construction work in a deferral area shall be eligible to apply for a certificate of eligibility for renovation construction work on the same property, where the renovation construction work is the same as, or similar to, the commercial construction work for which the deferral area certificate was issued, until three years after the effective date of the deferral area certificate. No recipient shall receive a tax deferral and a tax exemption for the same expenditure on eligible construction work.

e. A copy of the certificate of eligibility shall be filed by the department of finance in the manner prescribed for recording a mortgage pursuant to section two hundred ninety-one-d of the real property law.

f. The department of finance may provide by rule for reasonable administrative charges or fees necessary to defray expenses in administering the benefit program provided by this part.

§ 11-261 Reporting requirement; termination of benefits. a. Upon approval by the department of buildings of the plans submitted in connection with the building permit and any amendments to such plans, the recipient shall file with the department of finance a narrative description of such approved plans describing the industrial, commercial or renovation construction work for which such recipient seeks benefits pursuant to this part.

b. For the duration of the benefit period the recipient shall file annually with the department of finance, on or before the taxable status date, a certificate of continuing use stating the purposes for which the property described in the certificate of eligibility is being used and the net square footage allotted to each such purpose. Such certificate of continuing use shall be on a form prescribed by the department of finance and shall state the total number of workers employed on the property and the number of such workers who are city residents. The department of finance shall have authority to terminate benefits pursuant to this part upon failure of a recipient to file such certificate by the taxable status date. The burden of proof shall be on the recipient to establish continuing eligibility for benefits and the department of finance shall have the authority to require that statements made in such certificate shall be made under oath.

c. A recipient shall file an amendment to the latest certificate of continuing use prior to (1) converting square footage within property which is the subject of a certificate of eligibility for industrial construction work from use for the manufacturing activities described in such certificate of continuing use where such conversion results in less than sixty-five per centum of total net square footage being used or held out for use for manufacturing activities; or (2) converting any portion of property which is the subject of a certificate of eligibility to use for any restricted activity or as residential property.

d. No later than eighteen months after the effective date of a certificate of eligibility with an effective date of June thirtieth, nineteen hundred ninety-two or before, the recipient shall present evidence to the department of finance demonstrating that the recipient has made one-half of the minimum required expenditure. Not later than thirty-six months after the effective date of such certificate, such recipient

shall present evidence to such department demonstrating that the recipient has made the minimum required expenditure. Not later than thirty months after the effective date of a certificate of eligibility with an effective date of July first, nineteen hundred ninety-two or after, the recipient shall present evidence to the department of finance demonstrating that the recipient has made one-half of the minimum required expenditure. Such evidence shall be presented in the form and manner prescribed by such department. The burden of proof shall be on the recipient to show by clear and convincing evidence that the required expenditures have been made. This subdivision shall not apply to the recipient of a certificate of eligibility for construction of a new building or structure that meets the requirements set forth in subdivision i of section 11-259 of this part in a new construction exemption area.

e. A recipient of a certificate of eligibility for construction of a new building or structure in a new construction exemption area shall present evidence to the department of finance demonstrating that the requirements of subdivision i of section 11-259 of this part have been met. Such evidence shall be presented in the form and manner and at the time prescribed by such department. The burden of proof shall be on the recipient to show by clear and convincing evidence that such requirements have been met.

§ 11-262 Conversion of property. a. Any recipient whose property is the subject of a certificate of eligibility for commercial or renovation construction work, and who, prior to the expiration of the benefit period, uses such property as industrial property, shall continue to receive benefits for commercial or renovation construction work as the case may be.

b. Any recipient whose property is the subject of a certificate of eligibility for industrial construction work, and who, prior to the expiration of the benefit period, uses such property as commercial property, shall cease to be eligible for further exemption or abatement for industrial construction work as of the last date to which such recipient proves by clear and convincing evidence that such property was used as industrial property, and shall pay with interest any taxes for which an exemption or abatement was claimed after such date, except that:

(1) a recipient of a certificate of eligibility for industrial construction work in a special exemption area who would have been eligible to receive a certificate of eligibility for commercial construction work at the time such recipient applied for benefits shall continue to receive an exemption for industrial construction; and

(2) a recipient of a certificate of eligibility for industrial construction work in a regular exemption area who would have been eligible to receive a certificate of eligibility for commercial construction work at the time such recipient applied for benefits shall, commencing with the date of conversion to commercial property and continuing until the expiration of the benefit period for commercial construction work, receive any exemption which such recipient would have received in the corresponding tax year pursuant to a certificate of eligibility for commercial construction work; and

(3) a recipient of a certificate of eligibility for industrial construction work in any area of the city on whose property at least sixty-five per centum of the net square footage continues to be used or held out for use for manufacturing activities after conversion to commercial property, shall not be required to pay the pro rata share of

tax for which an exemption was claimed during the tax year in which such conversion occurred.

c. Except as provided in subdivision d of this section, any recipient whose property is the subject of a certificate of eligibility for commercial, industrial or renovation construction work, and who uses such property as residential property or for any restricted activity prior to the expiration of the benefit period, shall cease to be eligible for further exemption, abatement or deferral as of the date such property was first used as residential property or for any restricted activity. In the case of property in an area that was designated as an exemption area at the time the certificate of eligibility was issued, such recipient shall pay with interest any taxes for which an exemption was claimed after such date, including the pro rata share of tax for which any exemption was claimed during the tax year in which such use occurred. In the case of industrial property, such recipient shall pay with interest any taxes for which an exemption or abatement was claimed after such date, including the pro rata share of tax for which any exemption or abatement was claimed during the tax year in which such use occurred. In the case of property in an area that was designated as a deferral area at the time the certificate of eligibility was issued, all deferred tax payments on the property shall become due and payable immediately.

d. Notwithstanding subdivision c of this section, any recipient whose property is the subject of a certificate of eligibility for commercial or renovation construction work with an effective date of July first, nineteen hundred ninety-two or after, and who, prior to the expiration of the benefit period, uses a portion of such property as residential property, shall cease to be eligible for further exemption for commercial or renovation construction work for that portion of such property used as residential property as of the date such portion of the property was first used as residential property. Such recipient shall pay, with interest, any taxes for which an exemption was claimed after such date attributable to that portion of the property used as residential property, including the pro rata share of tax for which such exemption was claimed during the tax year in which such use occurred. Such recipient shall continue to receive an exemption for commercial or renovation construction work for that portion of the property which continues to be used as commercial property.

§ 11-263 Administration of the benefit program. The department of finance shall have, in addition to any other functions, powers and duties which have been or may be conferred on it by law, the following functions, powers and duties:

(1) To publicize the availability of benefits pursuant to this part for industrial, commercial and renovation construction work.

(2) To receive and review applications for certificates of eligibility, issue such certificates where authorized pursuant to section 11-260 of this part, and record the issuance of such certificates as prescribed in such section.

(3) To receive evidence of expenditures made for construction, and where such expenditures do not equal the amount required to qualify for exemption from or abatement or deferral of tax payments to take appropriate action, including but not limited to denying, reducing, suspending, terminating or revoking benefits pursuant to this part.

(4) To enter and inspect property to determine whether it is industrial or commercial or mixed-use and to determine whether (a) any such property is being used for any restricted use, or (b) any property which

is the subject of a certificate of eligibility for industrial construction work is being used as commercial property, or (c) any industrial or commercial property is being used as residential or mixed-use property, or (d) all or part of the nonresidential portion of mixed-use property is being used as residential property.

(5) To collect all real property taxes for which payment is deferred pursuant to this part.

(6) To collect all real property taxes, with interest, due and owing as a result of reduction, suspension, termination or revocation of any exemption from or abatement or deferral of taxes granted pursuant to this part.

(7) To make and promulgate regulations to carry out the purposes of this part including, but not limited to, regulations requiring applicants to publish notice of their applications, defining manufacturing and commercial activities and specifying the nature of work for which expenses may be included in the minimum required expenditure, provided, however, that any regulation increasing the minimum required expenditure shall not apply to any person who is a recipient on the effective date of such regulation. Such regulations shall include a requirement that with respect to the construction work recipients and their contractors shall be equal opportunity employers and shall also provide that persons employed in the construction work shall implement a training program for economically disadvantaged persons enrolled or eligible to be enrolled in training programs approved by the department of labor, with particular reference to city residents.

§ 11-264 Tax lien; interest rate. a. All taxes plus interest required to be paid retroactively pursuant to this part shall constitute a tax lien as of the date it is determined such taxes and interest are owed. All interest shall be calculated from the date the taxes would have been due but for the exemption, abatement or deferral claimed pursuant to this part at three per centum above the applicable rate of interest imposed by the city generally for non-payment of real property tax on such date.

b. All taxes for which payment is deferred pursuant to section 11-257 of this part shall constitute a tax lien as of the date they are due and payable in accordance with the provisions of that section.

§ 11-265 Penalties for non-compliance, false statements and omissions. a. The department of finance may deny, reduce, suspend, revoke or terminate any exemption from or abatement or deferral of tax payments pursuant to this part whenever:

(1) a recipient fails to comply with the requirements of this part or the rules and regulations promulgated by the department of finance pursuant thereto; or

(2) an application, certificate, report or other document delivered by an applicant or recipient hereunder contains a false or misleading statement as to a material fact or omits to state any material fact necessary in order to make the statements therein not false or misleading, and may declare any applicant or recipient who makes such false or misleading statement or omission to be ineligible for future exemption, abatement or deferral pursuant to this part for the same or other property.

b. Notwithstanding any other law to the contrary, a recipient shall be personally liable for any taxes owed pursuant to this part whenever such recipient fails to comply with such law and rules or makes such false or misleading statement or omission, and the department of finance determines that such act was due to the recipient's willful neglect, or that

under the circumstances such act constituted a fraud on the department of finance or a buyer or prospective buyer of the property. The remedy provided herein for an action in personam shall be in addition to any other remedy or procedure for the enforcement of collection of delinquent taxes provided by any general, special or local law. Any lease provision which obligates a tenant to pay taxes which become due because of willful neglect or fraud by the recipient, or otherwise relieve or indemnify the recipient from any personal liability arising hereunder, shall be void as against public policy except where the imposition of such taxes or liability is occasioned by actions of the tenant in violation of the lease.

§ 11-266 Code violations; suspension of benefits. a. If a court, or the environmental control board of the preceding municipality with respect to matters within its jurisdiction, finds that at the property which is the subject of a certificate of eligibility there has been a violation of any of the provisions of the building, fire and air pollution control codes of the preceding municipality set forth in subdivision b of this section, all benefits pursuant to such certificate shall be suspended unless within one hundred eighty days after the department of finance has sent notice of such finding to the recipient, and all other persons having a financial interest in the property who have filed a timely request for such notice in such form as may be prescribed by the department of finance, the recipient submits to the department of finance, certification from the department of buildings, the fire department or the department of environmental protection respectively that the underlying code violation has been cured. If the recipient fails to submit the required certification within the one hundred eighty day period, the period of suspension shall be effective retroactively to the time of the finding by the court or the environmental control board. The suspension of benefits shall continue until the recipient submits to the department of finance the required certification that the violation has been cured.

If the original finding of violation or the denial of certification is appealed and a court or appropriate governmental agency finally determines that the finding of violation or denial of certification was invalid, any benefits lost pursuant to this section to which the recipient was entitled shall be restored retroactively.

As applied to a recipient who is eligible for deferral of tax payments pursuant to subdivision d of section 11-257 of this part, suspension of benefits shall be deferred by operation of such section and interest at the rate charged by the department of finance for overdue taxes shall be charged on the amount of any tax payments already deferred by operation of such section. The interest charged shall accrue from the beginning of the period of suspension.

b. The provisions of subdivision a of this section shall apply to violations of the following provision of the code of the preceding municipality:

(1) section 27-4260 of the preceding municipality;
(2) section 27-4265 of the preceding municipality;
(3) section 27-4267 of the preceding municipality;
(4) section 27-954 of the preceding municipality;
(5) section 27-339 of the preceding municipality;
(6) subdivision (c) of section 27-353 of the preceding municipality;
(7) paragraph twelve of subdivision (f) of section 27-972 of the preceding municipality;

(8) paragraph ten of subdivision (g) of section 27-972 of the preceding municipality;
(9) subdivision (c) of section 27-975 of the preceding municipality;
(10) subdivision (c) of section 27-989 of the preceding municipality;
(11) the following provisions to the extent applicable to cabarets as defined in article two of subchapter two of the building code of the preceding municipality:
(a) section 27-542 of the preceding municipality;
(b) subparagraph d of paragraph two of subdivision (b) of section 27-547 of the preceding municipality;
(c) paragraph three of subdivision (a) of section 27-549 of the preceding municipality;
(d) subdivision (b) of section 27-549 of the preceding municipality;
(12) section 27-127 of the preceding municipality when the violation concerns an unsafe condition on a facade of a building which exceeds six stories in height;
(13) section five hundred one of reference standard 13-1 of the preceding municipality;
(14) section one thousand three of reference standard 13-1 of the preceding municipality;
(15) paragraph six of subdivision (b) of section 24-178 of the preceding municipality; and
(16) section 24-185 of the preceding municipality.

§ 11-267 Annual report. The department of finance shall submit an annual report to the council, on April first of each year, concerning the status of the program established pursuant to this part and its effects in the city, including information on certificates of eligibility issued and jobs created in each area where benefits are available.

## CHAPTER 3
## TAX LIENS AND TAX SALES

§ 11-301 When taxes, assessments, sewer rents, sewer surcharges and water rents to be liens on land assessed. All taxes and all assessments and all sewer rents, sewer surcharges and water rents, and the interest and charges thereon, which may be laid or may have heretofore been laid, upon any real estate now in the city, shall continue to be, until paid, a lien thereon, and shall be preferred in payment to all other charges. The words "water rents" whenever they are used in this chapter shall include uniform annual charges and extra and miscellaneous charges for the supply of water, charges in accordance with meter rates, minimum charges for the supply of water by meter, annual service charges and charges for meters and their connections and for their setting, repair and maintenance, penalties and fines and all lawful charges for the supply of water imposed pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law. Charges for expense of meters, their connections, setting, repair or maintenance shall not be due or become a charge or lien on the premises where a water meter shall be installed or against which a charge shall be made, until such charge shall have been definitely fixed by the commissioner of environmental protection, and an entry of the amount thereof shall have been made with the date of such entry in the book in which the charges for water supplied by meter against such premises are to be entered. A charge in accordance with meter rates or minimum charges for the supply of water measured by meter, and a service charge shall not be due or become a lien or charge upon the premises where such meter is installed until an entry shall

have been made indicating that such premises are metered, with the date of such entry in the book in which the charges for water by meter measurement against such premises are to be entered. The words "sewer rents" when used in this chapter shall mean any rents or charges imposed pursuant to section 24-514 of the code of the preceding municipality or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law. The words "sewer surcharges" when used in this chapter shall mean the charges imposed pursuant to section 24-523 of the code of the preceding municipality or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law. Whenever an increase in the amount of uniform annual charges or extra or miscellaneous charges shall have been made or a charge shall have been made for water services for any building completed subsequent to the first day of January in each year, the amount of such increase of the charge or new charge for such new building shall not be due or become a lien or charge against the premises until the amounts thereof shall have been entered with the date of such entries, respectively, in the books in which the uniform annual charges and extra or miscellaneous charges against such premises are to be entered. The words "tax lien" when used in this chapter shall mean the lien arising pursuant to the provisions of this chapter or pursuant to the New York city municipal water finance authority act, which is set forth in title two-A of article five of the public authorities law, as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter if the tax lien is sold, interest and penalties thereon and the right of the city to receive such amounts. The words "tax lien certificate" when used in this chapter shall mean the instrument evidencing a tax lien and executed by the commissioner of finance or his or her designee at such time as such lien is transferred to a purchaser upon sale of such lien by the city.

§ 11-302 Interest rates not to be reduced. The commissioner of finance shall not reduce the rate of interest upon any taxes or assessment below the amount fixed by law.

§ 11-302.1 Error in record of payment of tax or assessment. (a) If the records of the department of finance show a charge as paid due to a misapplied payment or other error, and the department later corrects the records, interest shall not be imposed until after the department (i) corrects the error and (ii) sends a statement of account or other similar bill or notice stating the amount due and when the charge must be paid to avoid the accrual of interest.

(b) The provisions of this section shall not apply to an installment of tax or an assessment for which payment, made electronically, by check, or by other means, was dishonored.

(c) The provisions of this section shall not apply where the error in the records of the department was made as a result of fraud or other criminal conduct by the taxpayer or any person acting on his or her behalf or at his or her request.

§ 11-303 Arrears to be provided for in assessment rolls. There shall be ruled in the yearly assessment rolls of the taxes in each section or ward, a column headed "arrears," in which the commissioner of finance shall annually before any taxes for the year are collected, cause to be

entered the word "arrears" opposite to the ward, lot, town, block and map numbers on which any arrears of taxes, sewer rents, sewer surcharges or water rents shall be due, or on which any assessment shall remain unpaid which was due or confirmed one month prior to the first of July, then last past.

§ 11-304 Bills for taxes to show arrears. There shall be ruled a column for "arrears" in every bill rendered for taxes for lots on which such arrears or assessments, sewer rents, sewer surcharges or water rents, and interest and penalties thereon, may be due as aforesaid, or may have been sold and yet be redeemable, in which shall be written in a conspicuous place, "arrears". The columns for arrears indicate lots sold for arrears, or to be sold therefor; arrears to be paid and lots redeemed at the office of the city collector.

§ 11-305 Commissioner of finance to publish notice of confirmation of assessments. It shall be the duty of the commissioner of finance to give public notice, by advertisement, for at least ten days, in the City Record and as soon as practicable and within ten days after the confirmation of any assessment, that the same has been confirmed, specifying the title of such assessment, and the date of its confirmation, and also the date of entry in the record of titles of assessments kept in the department of finance, addressed as a class to all persons, owners of property affected by any such assessment, that unless the amount assessed for benefit on any person or property shall be paid within ninety days after the date of the entry of any such assessment, interest shall be thereafter collected thereon as provided in section 11-306 of this chapter.

§ 11-306 Interest to be charged if assessments unpaid for ninety days; payment in installments. If any assessment shall remain unpaid for the period of ninety days after the date of the entry thereof on the record of titles of assessments, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon, at the rate of seven percent per annum, to be calculated to the date of payment from the date when such assessment became a lien as provided by section three hundred fourteen of the New York city charter in force at the time of the adoption of the New York city charter by referendum in the year nineteen hundred sixty-one, provided, however, that the city collector shall accept and credit as payments on account of assessments now or hereafter levied against any parcel or plot of property, such sums of money not less than twenty-five dollars or multiples thereof in amount as may be tendered for payment on account of any assessment now or hereafter levied against any property. Upon requisition by the commissioner of finance for the assessed valuation of the property affected by any assessment, the president of the tax commission, or any tax commissioner duly assigned by him or her, shall forthwith certify the same to the commissioner of finance.

§ 11-307 Payments in installments of assessments heretofore or hereafter confirmed. Upon the application in writing of the owner of a parcel of real property affected by an unpaid assessment heretofore or hereafter confirmed the amount of which is one hundred dollars or more, the commissioner of finance shall divide the assessment upon such parcel into fifteen parts or, if the application so requests, into five parts, as nearly equal as may be, or if the amount of such assessment is fifty dollars or more but less than one hundred dollars the commissioner of finance shall divide the assessment upon such parcel into five parts as nearly equal as may be. One part thereof in any event shall be due and payable, and in each case as many more of such parts shall be due and

payable as years may have elapsed since the entry of such original assessment for collection. Such parts thereof with interest at the rate of seven percent per annum on the amount of the assessment unpaid shall be paid at the time of application as a condition of the extension of time of payment of the remainder as provided in this section. Upon payment of such parts and interests, the balance of such assessments shall cease to be a lien upon such real property except as hereinafter provided; and the remaining parts shall be paid in annual installments as herein provided. Of such installments the first, with interest at the rate of four percent thereon, and on the installments thereafter to become due, from the date of payment of the parts of such assessment paid as hereinbefore provided, shall become due and payable and be a lien on the real property assessed, on the next ensuing anniversary of the date of entry of the assessment in the record of titles of assessments confirmed; and one, with interest at the rate of four percent per annum thereon and on the installments thereafter to become due shall become due and payable and be a lien upon the real property assessed, annually thereafter. After the time herein specified for annual installments and interest to become due, the amount of the lien thereon shall bear interest at the rate of seven percent per annum. Any installment assessment shall not be further divided into installments. The first installment of an assessment divided within the ninety-day period provided by section 11-306 of this chapter during which assessment may be paid without interest shall not be subject to interest, but the second installment with interest at the rate of four percent per annum from the original date of entry shall become due and payable and be a lien upon the real property on the anniversary date of entry of the assessment and the remaining installments with interest shall become due and payable and be a lien on the real property as hereinbefore provided. The installments not due with interest at the rate of four percent per annum to the date of payment may be paid at any time. The provisions of this chapter with reference to the sale of tax liens shall apply to the several unpaid installments and the interest thereon in the same manner as if each installment and the interest thereon had been imposed as an assessment payable in one payment, at the time such installment became a lien. In the event of the acquisition by condemnation by the city for public purposes any property upon which there are installments not due, such installments shall become due as of the date of the entry of the final order of the supreme court or the confirmation of the report of the commissioners in the condemnation proceedings, and shall be set off against an award that may be made for the property acquired.

When an award for damage shall accrue to the same person who is or was at the time the assessment was confirmed liable for the assessments for benefit on the abutting property in the same proceedings, only the portion of the assessment in excess of such award may be considered in levying in installments under the provisions of this section. Except as provided in this section, no such annual installment shall be a lien or deemed to be an encumbrance upon the title to the real property assessed until it becomes due as herein provided.

§ 11-308 Apportionment of assessment. If a sum of money in gross has been or shall be assessed upon any lands or premises in the city, any person or persons claiming any divided or undivided part thereof may pay such part of the sums of money so assessed, also of the interest and charges due or charged thereon, as the commissioner of finance may deem to be just and equitable. The remainder of the sum of money so assessed, together with the interest and charges, shall be a lien upon

the residue of the land and premises only, and the tax lien upon such residue may be sold in pursuance of the provisions of this chapter, to satisfy the residue of such assessment, interest, or charges thereon, in the same manner as though the residue of such assessment had been imposed upon such residue of such land or premises.

§ 11-309 Notifying taxpayers of assessments. a. The owner of any lot, piece or parcel of land in the city of Staten Island or any person interested in such lot, piece or parcel, may file with the department of finance, a statement containing a brief description of such land, together with the section, block and lot number thereof, or such other identifying information as at the time is established by the department of finance, and a statement of the applicant's interest therein, together with a written request that such lot, piece or parcel of land be registered in the name of the applicant. In such statement the applicant shall designate a post office address to which notifications addressed to such applicant shall be sent. A brief description of such lot, piece or parcel of land corresponding to the description thereof in the statement so filed, together with the name of the applicant and his or her post office address and the date of such application, shall thereupon be registered in the department of finance.

b. As soon as any assessment for a local improvement shall have been confirmed, including assessments confirmed by a court of record, and the list thereof shall have been entered and filed in the department of finance, such assessment list shall be examined and thereupon, within twenty days after such entry there shall be mailed a notice addressed to each person in whose name any lot, piece or parcel of land, affected by such assessment, is registered, at the post office address registered in the records of the department of finance, which notice shall contain the brief description of the lot, piece or parcel of land registered in the name of the person to whom such notice is addressed, together with the amount assessed thereon, date of entry, and title of the improvement for which such assessment is made, and a statement of the rate of interest or penalty imposed for the nonpayment of such assessment, and the date from which the interest or penalty will be computed. Failure to comply with the provisions herein however, shall in no manner affect the validity or collectability of any assessment heretofore or hereafter confirmed, nor shall any claim arise or exist against the comptroller, the commissioner of finance, or any officer of the city by reason of such failure.

c. The commissioner of finance or his or her designee shall for the purpose of this section provide appropriate records for each section of the city, included within the respective boroughs, as the same shall appear upon the tax maps of the city.

§ 11-310 Water charges and sewer rents to be transmitted to commissioner of finance. The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all water rents, charges, fines and penalties and all sewer rents, charges, fines and penalties as the same become due or accrue.

§ 11-311 Sewer surcharges to be transmitted to commissioner of finance. The commissioner of environmental protection shall cause to be transmitted to the commissioner of finance an account of all sewer surcharges, fines and penalties as the same become due or accrue.

§ 11-312 Water rents; when payable; penalty for nonpayment. a. One-half (i) the uniform annual water charges and extra and miscellaneous charges for water not metered and (ii) annual service charges shall become due and payable, in advance if entered on January first, nineteen

hundred seventy-four for the period commencing January first, nineteen hundred seventy-four and ending June thirtieth, nineteen hundred seventy-four. Commencing on June thirtieth, nineteen hundred seventy-four, uniform annual water charges and extra and miscellaneous charges for water not metered and annual service charges shall be due and payable in advance on the thirtieth day of June in each year, if entered. If any of such rents and charges which become due and payable on or before June thirtieth, nineteen hundred seventy-six shall not have been paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date when such rents and charges became due and payable to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment. If any of such rents and charges which shall become due and payable on or after June thirtieth, nineteen hundred seventy-seven are not paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date when such rents and charges became due and payable to the date of payment. If not so entered and payable, but entered at any time subsequent thereto, they shall be due and payable when entered and notice thereof shall be mailed within five days of such entry to the premises against which they are imposed addressed to either the owner or the occupant and, if entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment.

b. All charges for meters and their connections and for their setting, repair and maintenance, and all charges in accordance with meter rates for supply of water measured by meter, including minimum charges for the supply of water measured by meter, shall be due and payable when entered, and notice thereof shall be mailed within five days of such entry stating the amount due and the nature of the rent or charge to the last known address of the person whose name appears on the record of such rents and charges as being the owner, occupant or agent or, where no name appears, to the premises addressed to either the owner or the occupant, and if entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-

six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the thirtieth day following the date of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment.

§ 11-313 Sewer rents; when payable; penalty for nonpayment. a. As used in this section:

1. The term "metered premises" shall mean premises, or any part thereof, (a) to which water is supplied by the municipal water supply system or by a private water company, and (b) at which the quantity of water supplied is measured by a water meter.

2. The term "unmetered premises" shall mean premises, or any part thereof, (a) to which water is supplied by the municipal water supply system or by a private water company, and (b) at which the quantity of water supplied is not measured by a water meter.

b. The sewer rents charged against metered premises in accordance with the provisions of paragraphs two and three of subdivision b of section 24-514 of the code of the preceding municipality and the rules duly promulgated pursuant to such section, including the minimum rents for the use of the sewer system, charged pursuant to such section and rules, and the sewer rents charged against any premises in accordance with the provisions of paragraphs four and five of subdivision b of section 24-514 of the code of the preceding municipality and rules duly promulgated pursuant to such section, including the minimum rents for the use of the sewer system, charged pursuant to such section and rules shall become due and shall become a charge or lien on the premises when the amount thereof shall have been fixed by the commissioner of environmental protection, and an entry thereof shall have been made against such premises with the date of such entry, in the book in which sewer rents are to be entered. The sewer surcharges charged against any premises pursuant to section 24-523 of the code of the preceding municipality shall become due and shall become a charge or lien on the premises when the amount thereof shall have been fixed by the commissioner of environmental protection and an entry thereof shall have been made against such premises in the book in which sewer surcharges are to be entered. A notice thereof, stating the amount due and the nature of the rent, surcharge or charge shall be mailed, within five days after such entry, to the last known address of the person whose name appears upon the records in the office of the department of finance as being the owner, occupant or agent or, where no name appears, to the premises addressed to either the owner or the occupant. If such rent, surcharge or charge shall have been entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the thirtieth day following the date of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of

payment. The rents or charges for the use of the sewer system charged during any specified period of time pursuant to the provisions of section 24-514 of the code of the preceding municipality and the rules promulgated thereunder shall be computed, in accordance with the provisions of such section and the rules duly promulgated thereunder, on the basis of water rents or charges computed for the same period.

c. Sewer rents charged against unmetered premises in accordance with the provisions of paragraphs two and three of subdivision b of section 24-514 of the code of the preceding municipality and the rules duly promulgated pursuant to such section, for the use of the sewer system during the one-year period commencing on the first day of July of each year, shall be due and payable and shall become a charge or lien on the premises on the first day of January following such first day of July, if entered, except that commencing on June thirtieth, nineteen hundred seventy-four such sewer rents shall be due and payable in advance on the thirtieth day of June in each year, if entered, and shall become a charge or lien on the premises on such date. If any of such rents or charges which became due and payable on or before June thirtieth, nineteen hundred seventy-six shall not have been paid to the commissioner of finance or his or her designee within thirty days after such first day of January, or, commencing on the thirtieth day of June, nineteen hundred seventy-four, on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date when such charges became due and payable to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment. If any of such rents or charges which shall become due and payable on or after June thirtieth, nineteen hundred seventy-seven are not paid to the commissioner of finance or his or her designee on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date when such rents or charges became due and payable to the date of payment. If not so entered and payable, but entered at any time subsequent thereto, they shall be due and payable and shall become a charge or lien on the premises when entered and notice thereof shall be mailed within five days after such entry, to the last known address of the person whose name appears upon the records in the department of finance as the owner or the occupant or if no name appears, to the premises addressed to either the owner or occupant. If any of such rents or charges which were entered on or before December thirty-first, nineteen hundred seventy-six but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of seven percent per annum from the date of entry to December thirty-first, nineteen hundred seventy-six, and at the rate of fifteen percent per annum from January first, nineteen hundred seventy-seven to the date of payment; if entered on or after January first, nineteen hundred seventy-seven but not paid on or before the last day of the month following the month of entry, it shall be the duty of the commissioner of finance or his or her designee to charge, collect and receive interest thereon to be calculated at the rate of fifteen percent per annum from the date of entry to the date of payment. The sewer rents

charged against unmetered premises for the use of the sewer system during the one-year period commencing on the first day of July of each year shall be computed in accordance with the provisions of section 24-514 of the code of the preceding municipality and the rules duly promulgated thereunder, upon the basis of water rents or charges computed for the same period.

d. Whenever an increase in the amount of the sewer rent charged against unmetered premises shall have been made or a charge shall have been made for sewer services for any building completed subsequent to the first day of July in each year, the amount of such increase of the charge or new charge for such new building shall not be due or become a lien or charge against the premises until the amounts thereof shall have been entered with the date of such entries, respectively, in the books in which sewer rents charged against such premises are to be entered.

e. No later than the twenty-fifth day of May in each year, the banking commission shall transmit a written recommendation to the council of a proposed interest rate to be charged for nonpayment of sewer rents. In making such recommendations the commission shall consider the prevailing interest rates charged for commercial loans extended to prime borrowers by commercial banks operating in the city and shall propose a rate of at least six per centum per annum greater than such rates. The council may by resolution adopt an interest rate to be charged for nonpayment of sewer rents pursuant to section 11-224 of the code and, for nonpayment of sewer rents that become due and payable on or after July first, two thousand five, pursuant to section 11-224.1 of the code, and may specify in such resolution the date on which such interest rate is to take effect.

§ 11-314 Notice of rules and regulations; penalty for nonpayment; water supply cut off. The rates and charges for supply of water, the annual service charges and minimum charges, the sewer rents, the sewer surcharges, the rules and regulations concerning the use of water, all other rules and regulations affecting users of water or concerning charges for supply of water, restrictions of the use of water, installation of meters, and all rules and regulations affecting property connected with the sewer system, penalties and fines for violations of rules and regulations shall be printed on each bill and permit so far as in the judgment of the commissioner of environmental protection they are applicable. This section and such printing and the printing of this section on such bills and permits shall be sufficient notice to owners, tenants or occupants of premises to authorize the imposition and recovery of any charges, surcharges and fines imposed under such rules and regulations and of any penalties imposed in pursuance of this chapter in addition to cutting off the supply of water. Where water charges payable in advance or sewer rents or charges payable as provided in subdivision c of section 11-313 of this chapter, are not paid within the period covered by such charges or rents, and a notice of such nonpayment is mailed by the commissioner of finance to the premises addressed to "owner or occupant," the commissioner of environmental protection may shut off the supply of water to such premises. Where water charges not payable in advance or sewer rents, sewer surcharges or charges payable as provided in subdivisions b and d of section 11-313 of this chapter have been made by the department and remain unpaid for more than thirty days or where the commissioner of environmental protection has certified that there is a flagrant and continued violation of a provision or provisions of section 24-523 of the code or of any rule or regulation promulgated pursuant thereto or of any order of the commissioner of

environmental protection issued pursuant thereto, after notice thereof mailed to the premises addressed to "owner or occupant," the commissioner of environmental protection may shut off the supply of water to the premises.

§ 11-315 Enforcement of collection of sewer rents, sewer surcharges and water rents. Sewer rents, sewer surcharges, charges, penalties and fines, and interest thereon, and water rents, charges, penalties and fines, and interest thereon, shall after they are payable to the commissioner of finance or his or her designee be enforced in the manner provided in this chapter and chapter four of this title. In addition to collecting sewer rents, sewer surcharges, charges, penalties and fines and interest thereon and water rents, charges, penalties and fines and interest thereon in the manner provided in this chapter and chapter four of this title, the city may maintain an action for their recovery against the person for whose benefit or by whom the water is taken or used or for whose benefit or by whom sewer service is used.

§ 11-316 Bills of arrears of taxes, assessments, sewer rents, sewer surcharges and water rents, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon to be furnished when requested. The commissioner of finance or his or her designee, upon the written request of the owner, the proposed vendee under a contract of sale, a mortgagee, any person having a vested or contingent interest in any lot or lots or their duly authorized agent, or any person who has made a filing pursuant to section 11-309 of this chapter shall furnish a bill of all arrears of taxes on any lot or lots due prior to the first of September, then last past, of sewer rents, sewer surcharges and water rents, assessments, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon, which are due and payable. Upon the payment of such bill which shall be called a bill of arrears the receipt of the commissioner of finance or his or her designee thereon shall be conclusive evidence of such payment. The commissioner of finance or his or her designee shall cause to be kept an account of amounts so collected, and the certificate of the commissioner of finance or his or her designee, that there are no tax liens on such lot or lots, shall forever free such lot or lots from all liens of taxes, sewer rents, sewer surcharges or water rents, assessments, any other charges that are made a lien subject to the provisions of this chapter, and interest and penalties thereon that are due and payable prior to the date of such receipt or certificate, but not from the lien of any tax lien duly sold and not theretofore satisfied.

§ 11-317 Fees for searches to be added to bills. Fees for such searches shall be included in the bills mentioned in section 11-316 of this chapter, and also charges for certificates, which shall be given by the commissioner of finance or his or her designee respecting lots on which there may be no arrears when searches are required. Such fees shall be regulated by local law.

§ 11-318 Fee for certified search and bill of arrears. A fee of twenty-five dollars shall be paid to and collected by the commissioner of finance or his or her designee on his or her furnishing a certified search and bill of arrears on each lot or piece of property mentioned or referred to in the written request therefor. The commissioner of finance shall be authorized to waive or reduce such fee in connection with any sale of a tax lien or tax liens pursuant to this chapter.

§ 11-319 Sales of tax liens. a. A tax lien or tax liens on a property or any component of the amount thereof may be sold by the city as

authorized by subdivision b of this section, when such tax lien or tax liens shall have remained unpaid in whole or in part for one year, provided, however, that a tax lien or tax liens on any class one property or any class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city only when the real property tax component of such tax lien or tax liens shall have remained unpaid in whole or in part for three years and, in the case of any such class one property that is not vacant land or any such class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, equals or exceeds the sum of five thousand dollars, or, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, for two years, and equals or exceeds the sum of five thousand dollars, or, in the case of abandoned class one property or abandoned class two property that is a residential condominium or residential cooperative, for eighteen months, and after such sale, shall be transferred, in the manner provided by this chapter, and provided, further, however, that (i) the real property tax component of such tax lien may not be sold pursuant to this subdivision on any: (A) residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of such residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of such residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date; or (B) real property that was granted an exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law in one of the two fiscal years preceding the date of such sale, provided that: (1) such exemption was granted to such real property upon the application of a not-for-profit organization that owns such real property on or after the date on which such real property was conveyed to such not-for-profit organization; (2) the real property tax component of such lien arose on or after the date on which such real property was conveyed to such not-for-profit organization; and (3) such not-for-profit organization is organized or conducted for one of the purposes described in paragraph a or paragraph b of subdivision one of section 11-246 of this title, and (ii) the sewer rents component, sewer surcharges component or water rents component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section

11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of any two or three family residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. A tax lien or tax liens on any property classified as a class two property, except a class two property that is a residential condominium or residential cooperative, or a class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, or class three property, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale. Notwithstanding any provision of this subdivision to the contrary, any such tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component. A tax lien or tax liens on a property classified as a class four property, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component or sewer rents component or sewer surcharges component or water rents component or emergency repair charges component, where such emergency repair charges accrued on or after January first, two thousand six and are made a lien pursuant to section 27-2144 of this code, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, provided, however, that any tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component, sewer rents component, sewer surcharges component, water rents component or emergency repair charges component. For purposes of this subdivision, the words "real property tax" shall not include an assessment or charge upon property imposed pursuant to section 25-411 of this code. A sale of a tax lien or tax liens shall include, in addition to such lien or liens that have remained unpaid in whole or in part for one year, or, in the case of any class one property or class two property that is a residential condominium or residential cooperative, when the real property tax component of such lien or liens has remained unpaid in whole or in part for three years, or, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, when the real property tax component of such lien or liens has remained unpaid in whole or in part for two years, and equals or exceeds the sum of five thousand dollars, any taxes, assessments,

sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon or such component of the amount thereof as shall be determined by the commissioner of finance. The commissioner of finance may promulgate rules defining "abandoned" property, as such term is used in this subdivision.

a-1. A subsequent tax lien or tax liens on a property or any component of the amount thereof may be sold by the city pursuant to this chapter, provided, however, that notwithstanding any provision in this chapter to the contrary, such tax lien or tax liens may be sold regardless of whether such tax lien or tax liens have remained unpaid in whole or in part for one year and, notwithstanding any provision in this chapter to the contrary, in the case of any class one property or class two property that is a residential condominium or residential cooperative or, beginning January first, two thousand twelve, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, such tax lien or tax liens may be sold if the real property tax component of such tax lien or tax liens has remained unpaid in whole or in part for one year, and provided, further, however, that (i) the real property tax component of such tax lien may not be sold pursuant to this subdivision on any residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of such residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of such residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date and (ii) the sewer rents component, sewer surcharges component or water rents component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of any two or three family residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdi-

vision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. For purposes of this subdivision, the term "subsequent tax lien or tax liens" shall mean any tax lien or tax liens on property that become such on or after the date of sale of any tax lien or tax liens on such property that have been sold pursuant to this chapter, provided that the prior tax lien or tax liens remain unpaid as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale of the subsequent tax lien or tax liens. A subsequent tax lien or tax liens on any property classified as a class two property, except a class two property that is a residential condominium or residential cooperative, or a class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, or class three property, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale. Notwithstanding any provision of this subdivision to the contrary, any such tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component. A subsequent tax lien or tax liens on a property classified as a class four property, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, shall not be sold by the city unless such tax lien or tax liens include a real property tax component or sewer rents component or sewer surcharges component or water rents component or emergency repair charges component, where such emergency repair charges accrued on or after January first, two thousand six and are made a lien pursuant to section 27-2144 of this code, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, provided, however, that any tax lien or tax liens that remain unpaid in whole or in part after such date may be sold regardless of whether such tax lien or tax liens include a real property tax component, sewer rents component, sewer surcharges component, water rents component or emergency repair charges component. For purposes of this subdivision, the words "real property tax" shall not include an assessment or charge upon property imposed pursuant to section 25-411 of this code. Nothing in this subdivision shall be deemed to limit the rights conferred by section 11-332 of this chapter on the holder of a tax lien certificate with respect to a subsequent tax lien.

a-2. In addition to any sale authorized pursuant to subdivision a or subdivision a-1 of this section and notwithstanding any provision of this chapter to the contrary, beginning on December first, two thousand seven, the water rents, sewer rents and sewer surcharges components of any tax lien on any class of real property, as such real property is classified in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city pursuant to this chapter, where such water rents, sewer rents or sewer surcharges component of such tax lien, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale: (i) shall have remained unpaid in whole or in part for one year and (ii) equals or exceeds the sum of one thousand dollars or, beginning on March first, two thousand eleven, in the case of any two or three family resi-

dential real property in class one, for one year, and equals or exceeds the sum of two thousand dollars, or, beginning on January first, two thousand twenty-one, in the case of any two or three family residential real property in class one, for one year, and equals or exceeds the sum of three thousand dollars, or, beginning on January first, two thousand twelve, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, for two years, and equals or exceeds the sum of five thousand dollars; provided, however, that such water rents, sewer rents or sewer surcharges component of such tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of any two or three family residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. After such sale, any such water rents, sewer rents or sewer surcharges component of such tax lien may be transferred in the manner provided by this chapter.

a-3. In addition to any sale authorized pursuant to subdivision a or subdivision a-1 of this section and notwithstanding any provision of this chapter to the contrary, beginning on December first, two thousand seven, a subsequent tax lien on any class of real property, as such real property is classified in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city pursuant to this chapter, regardless of whether such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid in whole or in part for one year, and regardless of whether such subsequent tax lien, or any component of the amount thereof, equals or exceeds the sum of one thousand dollars or beginning on March first, two thousand eleven, in the case of any two or three family residential real property in class one, a subsequent tax lien on such property may be sold by the city pursuant to this chapter, regardless of whether such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid in whole or in part for one year, and regardless of whether such subsequent tax lien, or any component of the amount thereof, equals or exceeds the sum of two thousand dollars, or, beginning on January first, two thousand twenty-one, in the case of any two or three family residential real property in class one, a subsequent tax lien on such property may be sold by the city pursuant to this chapter, regardless of whether such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid in whole or in part for one year, and regardless of

whether such subsequent tax lien, or any component of the amount thereof, equals or exceeds the sum of three thousand dollars, or, beginning on January first, two thousand twelve, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, a subsequent tax lien on such property may be sold by the city pursuant to this chapter, regardless of whether such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid in whole or in part for two years, and regardless of whether such subsequent tax lien, or any component of the amount thereof, equals or exceeds the sum of five thousand dollars; provided, however, that such subsequent tax lien may not be sold pursuant to this subdivision on any one family residential real property in class one or on any two or three family residential real property in class one that is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred fifty-eight of the real property tax law with respect to real property purchased with payments received as prisoner of war compensation from the United States government, or pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law, or where the owner of any two or three family residential real property in class one is receiving benefits in accordance with department of finance memorandum 05-3, or any successor memorandum thereto, relating to active duty military personnel, or where the owner of any two or three family residential real property in class one has been allowed a credit pursuant to subsection (e) of section six hundred six of the tax law for the calendar year in which the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale, occurs or for the calendar year immediately preceding such date. After such sale, any such subsequent tax lien, or any component of the amount thereof, may be transferred in the manner provided by this chapter. For purposes of this subdivision, the term "subsequent tax lien" shall mean the water rents, sewer rents or sewer surcharges component of any tax lien on property that becomes such on or after the date of sale of any water rents, sewer rents or sewer surcharges component of any tax lien on such property that has been sold pursuant to this chapter, provided that the prior tax lien remains unpaid as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale of the subsequent tax lien. Nothing in this subdivision shall be deemed to limit the rights conferred by section 11-332 of this chapter on the holder of a tax lien certificate with respect to a subsequent tax lien.

a-4. In addition to any sale authorized pursuant to subdivision a, a-1, a-2 or a-3 of this section and notwithstanding any provision of this chapter to the contrary, beginning on March first, two thousand eleven, the emergency repair charges component or alternative enforcement expenses and fees component, where such emergency repair charges accrued on or after January first, two thousand six and are made a lien pursuant to section 27-2144 of this code, or where such alternative enforcement expenses and fees are made a lien pursuant to section 27-2153 of this code, of any tax lien on any class of real property, as such real property is defined in subdivision one of section eighteen hundred two of the real property tax law, may be sold by the city pursuant to this chapter, where such emergency repair charges component or

alternative enforcement expenses and fees component of such tax lien, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale: (i) shall have remained unpaid in whole or in part for one year and (ii) equals or exceeds the sum of one thousand dollars or, beginning on January first, two thousand twelve, in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, for two years, and equals or exceeds the sum of five thousand dollars; provided, however, that such emergency repair charges component or alternative enforcement expenses and fees component of such tax lien may only be sold pursuant to this subdivision on any one, two or three family residential real property in class one, where such one, two or three family residential property in class one is not the primary residence of the owner. After such sale, any such emergency repair charges component or alternative enforcement expenses and fees component of such tax lien may be transferred in the manner provided by this chapter.

a-5. In addition to any sale authorized pursuant to subdivision a, a-1, a-2 or a-3 of this section and notwithstanding any provision of this chapter to the contrary, beginning on March first, two thousand eleven, a subsequent tax lien on any class of real property, or beginning on January first, two thousand twelve in the case of any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative, a subsequent tax lien on such property, may be sold by the city pursuant to this chapter, regardless of the length of time such subsequent tax lien, or any component of the amount thereof, shall have remained unpaid, and regardless of the amount of such subsequent tax lien. After such sale, any such subsequent tax lien, or any component of the amount thereof, may be transferred in the manner provided by this chapter. For purposes of this subdivision, the term "subsequent tax lien" shall mean the emergency repair charges component or alternative enforcement expenses and fees component, where such emergency repair charges accrued on or after January first, two thousand six and are made a lien pursuant to section 27-2144 of this code, or where such alternative enforcement expenses and fees are made a lien pursuant to section 27-2153 of this code, of any tax lien on property that becomes such on or after the date of sale of any emergency repair charges component or alternative enforcement expenses and fees component, of any tax lien on such property that has been sold pursuant to this chapter, provided that the prior tax lien remains unpaid as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of sale of the subsequent tax lien. Nothing in this subdivision shall be deemed to limit the rights conferred by section 11-332 of this chapter on the holder of a tax lien certificate with respect to a subsequent tax lien.

a-6. Notwithstanding any provision of this chapter to the contrary, beginning on September first, two thousand seventeen, a lien that includes civil penalties for a violation of section 28-201.1 of this code where such civil penalties accrued on or after July first, two thousand seventeen, and became a lien pursuant to section 28-204.6.6 of this code, may be sold by the city pursuant to this chapter, where such civil penalties component of such lien, as of the date of the first publication, pursuant to subdivision a of section 11-320 of this chap-

ter, of the notice of sale (i) shall have remained unpaid in whole or in part for one year or more and (ii) equals or exceeds the sum of one thousand dollars. After such sale, any such civil penalties component of such lien may be transferred in the manner provided by this chapter.

b. The commissioner of finance, on behalf of the city, may sell tax liens, either individually, in combinations, or in the aggregate, pursuant to the procedures provided herein. The commissioner of finance shall establish the terms and conditions of a sale of a tax lien or tax liens.

1. (i) The commissioner of finance may, in his or her discretion, sell a tax lien or tax liens through a competitive sale. In addition to the advertisement and notice required to be provided pursuant to section 11-320 of this chapter, the commissioner of finance or his or her designee shall cause to be published a notice of intention to sell a tax lien or tax liens through a competitive sale, which notice shall include the terms and conditions for such sale, the criteria by which bids shall be evaluated, and a request for any other information or documents that the commissioner of finance may require. Such notice shall be published in one newspaper of general circulation in the city, not less than fifteen days prior to the date designated by the commissioner for the submission of bids.

(ii) The commissioner of finance may, in his or her discretion, establish criteria for the eligibility of bidders pursuant to section 11-321.1 of this chapter.

(iii) The commissioner of finance may reject any or all bids, or may accept any combination of bids in a competitive sale.

2. (i) The commissioner of finance may, in his or her discretion, sell a tax lien or tax liens through a negotiated sale. In addition to the advertisement and notice required to be provided pursuant to section 11-320 of this chapter, the commissioner of finance or his or her designee shall cause to be published a notice of intention to sell a tax lien or tax liens through a negotiated sale, which notice shall advise that a request for statements of interest is available at the office of the department of finance, and which may require the submission of any information or documents that the commissioner deems appropriate, provided, however, that if the negotiated sale is to a trust or other entity created by the city or in which the city has an ownership or residual interest, then the requirement that the notice advise that a request for statements of interest is available at the office of the department of finance shall not apply. Such notice shall be published in one newspaper of general circulation in the city, not less than fifteen days prior to the date designated by the commissioner for the receipt of statements of interest, or if the negotiated sale is to such trust or other entity, then such notice shall be published not less than fifteen days prior to the date of sale. For purposes of this subparagraph, the words "date of sale" shall have the same meaning provided in subdivision e of section 11-320 of this chapter.

(ii) The commissioner of finance may engage in a negotiated sale in accordance with criteria to be established pursuant to section 11-321.1 of this chapter.

(iii) The commissioner of finance may execute a purchase and sale agreement and other necessary agreements with a designated purchaser or purchasers to complete a negotiated sale.

3. The commissioner of finance may establish a minimum price for the sale of tax liens that may be at a discount from or premium to the lien amount. Notwithstanding the preceding sentence, the commissioner of finance may not establish a minimum price for the sale of an individual

tax lien that is at a discount from the lien amount. The commissioner of finance shall sell such tax liens at a purchase price that, in the determination of such commissioner, is in the best interests of the city. The commissioner of finance, in his or her discretion, may accept cash or cash equivalent in immediately available funds, or other consideration acceptable to the commissioner, or any combination thereof in payment for a tax lien or tax liens.

4. The amount of a tax lien that is sold pursuant to this chapter shall be the unpaid amount of the lien as of the date of sale, including any interest and penalties thereon, any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, any surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon, or such component of the amount thereof as shall be determined by the commissioner of finance, notwithstanding the amount paid for purchase of the tax lien or component of the amount thereof. For purposes of this paragraph, the words "date of sale" shall have the same meaning provided in subdivision y of section 11-320 of this chapter.

5. (i) The commissioner of finance may, subsequent to the offer for sale of any tax lien or tax liens and the failure to complete such sale, offer such tax lien or tax liens for sale again to any other person or persons who satisfied the terms and conditions of the sale without providing any additional advertisements or notices pursuant to this chapter.

(ii) Notwithstanding subparagraph (i) of this paragraph, any tax lien that was noticed for sale pursuant to this chapter, but was not sold on the original date of sale, may be sold without any additional advertisements or notices pursuant to this chapter if the subsequent date of sale is within six months of the second publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of the original date of sale. If the subsequent date of sale is more than six months after the second publication, pursuant to subdivision a of section 11-320 of this chapter, of the notice of the original date of sale, then the commissioner of finance, or his or her designee, shall provide notice of the subsequent date of sale pursuant to subdivision b of section 11-320 of this chapter. No other additional advertisements or notices shall be necessary prior to the date of sale.

6. The rate of interest on any tax lien certificate shall be the rate adopted for nonpayment of taxes on real property, pursuant to subdivision (e) of section 11-224.1 of this title, that is in effect on January first of the year in which the tax lien is sold.

7. It is the intent of the city that a sale of a tax lien or tax liens pursuant to this chapter shall be a sale and not a borrowing.

8. Whenever any tax lien purchased at a tax lien sale is found to be invalid, void or defective in whole or in part, or not to conform to any representation or warranty with respect thereto, made by the commissioner of finance in connection with the sale thereof, by judgment or decree of a court of competent jurisdiction or by determination of the commissioner of finance, the commissioner of finance may, in his or her discretion, substitute for such tax lien or portion thereof another tax lien that has a value equivalent to the value of the tax lien or portion thereof found to be invalid, void, defective, or not to so conform, or may refund such value of the tax lien or portion thereof found to be invalid, void, defective, or not to so conform, or may use a combination

of substitution and refund. No other remedy shall be available to a purchaser of a tax lien which is found to be invalid, void, defective, or not to conform to a representation or warranty with respect thereto made by the commissioner of finance in connection with the sale thereof, in whole or in part. Whenever a tax lien of such equivalent value is to be substituted for a tax lien that has been found invalid, void, defective, or not to so conform, in whole or in part, pursuant to this section, the commissioner of finance or his or her designee shall provide mailed notice of the intention to substitute such lien of such equivalent value to any person required to be notified pursuant to section 11-320(b) of this chapter.

9. The commissioner of finance may establish requirements for a purchaser of a tax lien to provide any information and documents that the commissioner of finance deems necessary, including information concerning the collection and enforcement of tax liens. The commissioner of finance shall require the purchaser of a tax lien to provide the owner of property on which a tax lien has been sold pursuant to this chapter a detailed itemization of taxes, interest, surcharges, and fees charged to such owner on all tax lien statements of amounts due or bill of charges. Such fees shall be bona fide, reasonable and, in the case of attorneys' fees, customary.

10. (i) On and after January first, two thousand twelve, no tax lien shall be sold pursuant to this chapter on any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is a residential condominium or residential cooperative. If, notwithstanding the foregoing sentence, any such tax lien is sold in error pursuant to this chapter on and after January first, two thousand twelve on such property, then the provisions of paragraph eight of this subdivision shall apply to such sale, including the authority of the commissioner of finance to substitute for such tax lien another tax lien that has a value equivalent to the value of such tax lien or to refund the value of such tax lien. For the purposes of this paragraph, property owned by such company shall be limited to property owned for the purpose, as set forth in section five hundred seventy-one of the private housing finance law, of providing housing for families and persons of low income.

(ii) No later than May first, two thousand eleven, the commissioner of finance, in consultation with the commissioner of housing preservation and development, shall notify by mail any class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or residential cooperative, of the authority of the commissioner of finance to sell the tax liens on such property. Such notification shall include information relating to the lien sale process, including, but not limited to, actions homeowners can take if a lien is sold on such property; the type of debt that can be sold in a lien sale; a timeline of statutory notifications required pursuant to section 11-320 of this chapter; a clear, concise explanation of the consequences of the sale of a tax lien; the telephone number and electronic mail address of the employee or employees designated pursuant to subdivision f of section 11-320 of this chapter; a conspicuous statement that the owner of the property may enter into a payment plan for exclusion from the tax lien sale; and credits and property tax exemptions that may exclude a property from a tax lien sale and any other credit or residential real property tax exemption information, which, in the discretion of the commissioner of finance, should be included in such notification.

Upon such property owner's written request, or verbal request to 311 or any employee designated pursuant to subdivision f of section 11-320 of this chapter, a Chinese, Korean, Russian or Spanish translation of such notice shall be provided promptly to such property owner.

11. No later than the first of September in the year next succeeding the effective date of this section, the appropriate agency shall promulgate rules identifying or describing any existing procedures governing challenges to the validity of any real property tax, sewer rent, sewer surcharge, water rent, emergency repair charge or alternative enforcement expense or fee.

12. On or after January first, two thousand fifteen and before January first, two thousand seventeen, no tax lien shall be sold pursuant to this chapter on the following properties: (i) properties enrolled in the city's Build It Back Program; and (ii) properties defined as "eligible real property" pursuant to subdivision three of section four hundred sixty-seven-g of the real property tax law. If, notwithstanding the foregoing sentence, any such tax lien is sold in error pursuant to this chapter during such time period on properties described in subparagraph (i) or (ii) of this paragraph, then the provisions of paragraph eight of this subdivision shall apply to such sale, including the authority of the commissioner of finance to substitute for such tax lien another tax lien that has a value equivalent to the value of such tax lien or to refund the value of such lien.

13. Notwithstanding any provision of this chapter to the contrary, no tax lien shall be sold pursuant to this chapter on any of the following properties: (i) any real property for which the owner in good faith has submitted an application that is pending with the department of finance for a real property tax exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law; and (ii) any real property for which the owner has in good faith filed an appeal with the tax commission of a denial of any such application and such appeal is pending. There shall be a rebuttable presumption that an application or an appeal referenced in the preceding sentence was not submitted in good faith where, within the twenty-four months preceding the submission of such application or such appeal, the period for the filing of an appeal of a denial by the department of finance of a previous application for a real property tax exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law has expired.

§ 11-320 Notice of sale to be advertised and mailed. a. 1. The tax lien on property in the city shall not be sold pursuant to section 11-319 of this chapter unless notice of such sale as provided herein has been published twice, the first publication to be in a newspaper of general circulation in the city, not less than ninety days preceding the date of the sale, and the second publication to be in a publication designated by the commissioner of finance, not less than ten days preceding the date of the sale. Such publication shall include a description by block and lot or by such other identification as the commissioner of finance may deem appropriate, of the property upon which the tax lien exists that may be included in the sale, and a statement that a list of the tax liens that may be included in the sale is available for inspection in the office of the city register and the office of the county clerk. The commissioner of finance shall file such list in the office of the city register and the office of the county clerk not less than ninety days prior to the date of sale.

2. Not less than ninety days preceding the date of the sale, the commissioner of finance shall post online, to the extent such information is available, the borough, block and lot of any property on which a lien has been or will be noticed for sale in accordance with paragraph one of this subdivision and that, in one or more of the five fiscal years preceding the date of the sale, was in receipt of a real property tax exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six or four hundred sixty-two of the real property tax law and, in addition, shall post online, to the extent such information is available, the borough, block and lot of any vacant land classified as class one or class four pursuant to section eighteen hundred two of the real property tax law on which a lien has been or will be noticed for sale in accordance with paragraph one of this subdivision. Any failure to comply with this paragraph shall not affect the validity of any sale of tax liens pursuant to this chapter.

b. 1. A tax lien shall not be sold unless the commissioner of finance, or his or her designee, notifies the owner of record at the address of record and any other person who has registered pursuant to section 11-309 of this chapter, or pursuant to section 11-416 or 11-417 of this title, by first class mail, of the intention to sell the tax lien. If no such registrations have been filed then such commissioner, or his or her designee, shall notify the person whose name and address, if any, appears in the latest annual record of assessed valuations, by first class mail, of the intention to sell the tax lien. Such mailed notice shall include a description of the property by block and lot and such other identifying information as the commissioner of finance may deem appropriate, the amount of the tax lien, including all taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, as well as an estimate of the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable on the date specified in such publication, a surcharge pursuant to section 11-332 of this chapter if the tax lien is sold, and interest and penalties thereon, and shall be mailed to such owner and such other persons four times: not less than ninety, sixty, thirty and ten days prior to the date of sale. Such notice shall state that if default continues to be made in payment of the amounts due on such property, the tax lien on such property shall be sold as provided in section 11-319 of this chapter. If, notwithstanding such notice, the owner shall continue to refuse or neglect to pay the amounts due on such property, the commissioner of finance may sell the tax lien on such property as provided in section 11-319 of this chapter.

2. (i) Such notices shall also include, with respect to any property owner in class one or class two, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, an exemption eligibility checklist. The exemption eligibility checklist shall also be posted on the website of the department of finance no later than the first business day after March fifteenth of every year prior to the date of sale, and shall continue to be posted on such website until ten days prior to the date of sale. Within ten business days of receipt of a completed exemption eligibility checklist from such property owner, provided that such receipt occurs prior to the date of sale of any tax lien or tax liens on his or her property, the department of finance shall review such checklist to determine, based on the information provided by the property owner, whether such property owner could be eligible for any exemption, credit or other benefit that would

entitle them to be excluded from a tax lien sale and, if the department determines that such property owner could be eligible for any such exemption, credit or other benefit, shall mail such property owner an application for the appropriate exemption, credit or other benefit. If, within twenty business days of the date the department mailed such application, the department of finance has not received a completed application from such property owner, such department shall mail such property owner a second application, and shall telephone the property owner, if the property owner has included his or her telephone number on the exemption eligibility checklist.

(ii) Any such property owner who returns to the department of finance a completed exemption eligibility checklist prior to the date of sale of any tax lien or tax liens on his or her property and who subsequently submits a completed application for the appropriate exemption, credit or other benefit either prior to, on or up to ninety days after such sale, shall have his or her application reviewed by the department of finance. If, prior to the date of sale, the department of finance determines that such property owner is qualified for such exemption, credit or other benefit or will be qualified as of the date of sale, then the tax lien or tax liens on his or her property shall not be sold on such date. If, on or after the date of sale, the department of finance determines that such property owner is or was qualified for such exemption, credit or other benefit as of the date of sale, then any tax lien or tax liens on his or her property that were sold shall be deemed defective.

(iii) Not later than thirty days prior to such date of sale, the department of finance shall submit to the council a list, disaggregated by council district, of all properties for which property owners returned a completed eligibility checklist to the department of finance at least thirty-five days prior to the date of sale, but for which property owners have not yet submitted a completed application for the appropriate exemption, credit or other benefit.

(iv) Not later than thirty days after such date of sale, the department of finance shall submit to the council a list, disaggregated by council district, of all properties for which property owners returned a completed eligibility checklist to the department of finance prior to the date of sale, but for which property owners have not yet submitted a completed application for the appropriate exemption, credit or other benefit.

(v) Upon the written or verbal request of such property owner, the department of finance shall provide prompt assistance to such property owner in completing an application for the appropriate exemption, credit or other benefit.

2-a. If, prior to the date of sale, the department of finance confirms that a property is the subject of (i) a judicial proceeding or (ii) an investigation or a prosecution by any agency or office of the United States or any state or subdivision thereof with regard to the ownership of such property arising from the fraudulent transmittal of a deed relating to such property, such department shall remove such property from the sale, provided that the owner of such property has provided an affidavit to such department and any such other documentation required by such department to establish that such property is the subject of such a proceeding, investigation or prosecution. Any such removal shall relate only to the sale of a tax lien or tax liens for which the owner has received notice pursuant to paragraph one of subdivision b of this section. Failure by the department of finance to remove such property

shall not affect the validity of any sale of tax liens pursuant to this chapter.

3. The notice provided not less than ninety days prior to the date of sale shall also include information relating to the lien sale process, including, but not limited to, actions homeowners can take if a lien is sold on such property; the type of debt that can be sold in a lien sale; a timeline of statutory notifications required pursuant to this section; a clear, concise explanation of the consequences of the sale of a tax lien; the telephone number and electronic mail address of the employee or employees designated pursuant to subdivision f of this section; a conspicuous statement that the owner of the property may enter into a payment plan for exclusion from the tax lien sale; and credits and property tax exemptions that may exclude certain class one real property from a tax lien sale. Such notice shall also include information on the following real property tax exemptions, credits or other benefits:

(i) the senior citizen homeowner exemption pursuant to section 11-245.3 of this title;

(ii) the exemption for persons with disabilities pursuant to section 11-245.4 of this title;

(iii) the exemption for veterans pursuant to section four hundred fifty-eight of the real property tax law, with respect to real property purchased with payments received as prisoner of war compensation from the United States government;

(iv) the exemption for veterans pursuant to paragraph (b) or (c) of subdivision two of section four hundred fifty-eight-a of the real property tax law;

(v) the state circuit breaker income tax credit pursuant to subsection (e) of section six hundred six of the tax law; and

(vi) the active duty military personnel benefit pursuant to department of finance memorandum 05-3, or any successor memorandum thereto.

Upon such property owner's written request, or verbal request to 311 or any employee designated pursuant to subdivision f of this section, a Chinese, Korean, Russian or Spanish translation of such notice shall be provided promptly to such property owner.

4. Such notice shall also include, with respect to a property that was in receipt of a real property tax exemption pursuant to section four hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four hundred sixty-two of the real property tax law in one or more of the three fiscal years preceding the date of the notice provided not less than ninety days prior to the date of sale, or with respect to a property in class four, as such class of property is defined in subdivision one of section eighteen hundred two of the real property tax law, information relating to the initial application and renewal process for such property tax exemptions, and other actions available to the owner of such property in the event such property is noticed for sale pursuant to this subdivision, including, if available, an adjustment or cancellation of back taxes. Upon request of the owner of such property, a translation of such notice in any of the top ten languages most commonly spoken within the city as determined by the department of city planning shall be provided to such owner.

5. The department of finance and the department of environmental protection shall, to the extent practicable, contact by telephone or electronic mail any person who (i) has registered their telephone number or electronic mail address with such departments and (ii) has received the ninety-day notice described in paragraph one of this subdivision. Any such contact shall be made within a time period reasonably proximate

to the mailing of such notice, shall inform such person of the intention to sell a tax lien and shall provide such other information as the respective commissioner deems appropriate, which may include, but need not be limited to, the telephone numbers and electronic mail addresses of the employees designated pursuant to subdivision f of this section. The department of finance shall contact by electronic mail any person who has registered pursuant to subdivision a of section 11-245.8 of this title to receive information about the outreach sessions described in subdivision j of this section and provide such information within a time period reasonably proximate to the scheduled outreach session. Failure by the department of finance or the department of environmental protection to contact any such person by telephone or electronic mail shall not affect the validity of any sale of tax liens pursuant to this chapter.

c. Such notices shall advise the owner of such property of his or her continued obligation to pay the amounts due on such property. No other notices or demands shall be required to be made to the owner of such property to authorize the sale of a tax lien or tax liens on such property pursuant to section 11-319 of this chapter.

c-1. Where a tax lien on property in the city has been noticed for sale pursuant to subdivision b of this section and such lien, prior to the date of sale, has been paid or is otherwise determined by the commissioner of finance not to be eligible to be sold, such commissioner shall promptly provide written notification to the owner of such property that such lien will not be or was not included in such sale and the reason therefor.

d. 1. The commissioner of finance or his or her designee shall, within ninety days after the delivery of the tax lien certificate, notify any person who was required to be notified of such sale pursuant to subdivision (b) of section 11-320 of this chapter, by first class mail, that such sale has occurred. Such notice shall state the date of the sale of the tax lien, the name and address of the purchaser of the tax lien, the amount of such lien, a description of the property by block and lot and such other identifying information as the commissioner of finance or his or her designee shall deem appropriate, and the terms and conditions of the tax lien certificate, including the right to satisfy the lien within the time periods specified in this chapter. Such notice shall also include the telephone number and electronic mail address of the employee or employees designated pursuant to subdivision f of this section.

2. Any written communication from the purchaser of the tax lien or liens to an owner of property, on which a tax lien has been sold pursuant to the provisions of this chapter, shall include the following information:

(i) an explanation of the roles of the purchaser of the tax lien and the employee or employees designated pursuant to subdivision f of this section;

(ii) the names and contact information, including the telephone number, electronic mail and mailing addresses of such persons; and

(iii) a statement informing such owner that he or she may be eligible to enter into a forbearance agreement with the purchaser of such tax lien.

3. The requirement to send such written communication shall be subject to federal, state and local debt collection laws.

4. Failure to provide notice pursuant to this subdivision shall not affect the validity of any sale of a tax lien or tax liens pursuant to this chapter.

e. The words "date of sale" when used in this section shall mean: (1) for a negotiated sale, the date of signing of the tax lien purchase agreement, and (2) for a competitive sale, the date designated by the commissioner of finance for the submission of bids.

f. The commissioner of finance shall designate an employee of the department to respond to inquiries from owners of property for which a tax lien has been sold or noticed for sale pursuant to subdivision a of this section and shall designate an employee of the department to respond to inquiries from owners sixty-five years of age or older of property for which a tax lien has been sold or noticed for sale pursuant to subdivision a of this section. The commissioner of environmental protection shall designate at least one employee of the department of environmental protection to respond to inquiries from owners of property for which a tax lien containing a water rents, sewer rents or sewer surcharges component has been sold or noticed for sale pursuant to subdivision a of this section. The telephone numbers and electronic mail addresses of employees designated pursuant to this subdivision shall be posted online and shall be included on all publications and notices required by subdivisions a and b of this section. Failure to include such numbers and addresses on all such publications and notices shall not affect the validity of any sale of tax liens pursuant to this chapter.

g. No later than one hundred twenty days after the tax lien sale, the commissioner of finance shall submit to the council a list of all properties, identified by block and lot, noticed for sale pursuant to subdivision b of this section. Such list shall also include a description of the disposition of such properties that shall include, but not be limited to, whether an owner entered into a payment plan with the city pursuant to section 11-322 or 11-322.1 of this chapter, whether an owner satisfied the tax lien or liens, whether ownership of the property was transferred, provided that such information is available to the city, or whether the property was distressed, as defined in subdivision four of section 11-401 of this title, or removed from the sale pursuant to the discretion of the commissioner of housing preservation and development.

h. 1. On a quarterly basis, a purchaser of tax liens shall provide to the council a list of all properties on which tax liens have been sold where, subsequent to such sale, there has been a transfer of ownership of the property, provided that a purchaser of tax liens has knowledge of such transfers, for the following groups:

(i) all properties on which liens for emergency repair charges or alternative enforcement expenses and fees have been sold to such purchaser pursuant to subdivision a-4 of section 11-319 of this chapter; and

(ii) all class two residential property owned by a company organized pursuant to article eleven of the private housing finance law that is not a residential condominium or a residential cooperative on which any tax lien has been sold pursuant to subdivision a, a-2 or a-4 of section 11-319 of this chapter.

2. When available, a purchaser of tax liens shall include the names and contact information of the new owners of record of such properties.

i. On a quarterly basis, a purchaser of tax liens shall provide to the council a property status report. For each property, such report shall include: (1) information about such property, including property tax class; property type; description of the tax lien or tax liens that have been sold to such purchaser on such property pursuant to this chapter, including the amount of the tax lien or tax liens, the costs of any

advertisements and notices given pursuant to this chapter; the amount of the surcharge pursuant to section 11-332 of this chapter; and the amount of interest and penalties thereon; and (2) the status of the tax lien or tax liens, including foreclosure information, if applicable; whether the property owner entered into an installment agreement; whether the property owner is current on such installment agreement; and whether the tax lien or tax liens on such property have been deemed defective, and, if so, the reason any such lien or liens were deemed defective. Each property listed in the report shall be identified by block and lot.

j. (1) At the request of a council member, the commissioner of finance, in consultation with the commissioner of housing preservation and development and the commissioner of environmental protection, may conduct outreach sessions in the district of such council member, provided, however, that, the commissioner of finance shall conduct such outreach sessions in the ten council districts with the greatest number of properties for which a notice of intention to sell a tax lien has been mailed ninety days prior to the date of sale pursuant to paragraph one of subdivision b of this section, and provided, further, however, that, such commissioner shall conduct additional outreach sessions in the five council districts with the greatest number of properties for which a notice of intention to sell a tax lien has been mailed ninety days prior to the date of sale pursuant to such paragraph. To the extent practicable, the commissioner of finance shall schedule the outreach sessions in the five council districts described in the preceding sentence such that one occurs prior to the mailing of the notice of intention to sell a tax lien that is required to be mailed thirty days prior to the date of sale pursuant to paragraph one of subdivision b of this section and one occurs subsequent to such mailing. The scope of such outreach sessions shall include, but need not be limited to, (i) actions property owners can take if a lien is sold on such property; (ii) the type of tax lien or tax liens that can be sold in a tax lien sale; (iii) installment agreement information, including informing attendees in such outreach sessions of their option to enter into an installment agreement for exclusion from the tax lien sale with no down payment, with options for income-based installment agreements or installment agreements with a term of up to ten years; (iv) credits and property tax exemptions that may exclude a property from a tax lien sale; (v) distribution of a customer survey to property owners who have received notice of the intention to sell a tax lien on their property, in order to determine the circumstances that led to the creation of the lien; and (vi) any other credit or residential real property tax exemption information, which, in the discretion of the commissioner of finance, should be included in such outreach sessions. (2) The commissioner of finance shall make a good faith effort to have a financial counselor available at such outreach sessions. No later than ninety days after the tax lien sale, the commissioner of finance shall submit to the council a report on the number of outreach sessions performed in each council district during the ninety-day period preceding the tax lien sale. Such report shall include: (i) the number of installment agreements begun by property owners or, as defined in subdivision b of section 11-322 of this chapter, other eligible persons acting on behalf of property owners at each outreach session; (ii) the number of property tax exemption applications begun at each outreach session; (iii) the total number of attendees at each outreach session; (iv) the number of outreach sessions at which a financial counselor was available; (v) the number of property owners, or other eligible persons acting on behalf of

property owners, who consulted a financial counselor at each outreach session at which a financial counselor was available; and (vi) the results of such surveys. Such report and the results of each outreach session shall be disaggregated by council district.

k. The commissioner of finance shall post online the information reported to the council pursuant to subdivisions h and i of this section, provided that no information shall be posted online that specifically identifies any property or property owner, except by zip code and a randomly generated identifier.

§ 11-321 Continuation of sale; notice required. A sale of a tax lien or tax liens may be continued from time to time, if necessary, until all the tax liens on the property so advertised and noticed shall be sold unless such sale is canceled or postponed in accordance with section 11-322 or 11-322.1 of this chapter. If a sale of a tax lien or tax liens is continued, the commissioner of finance, or his or her designee, shall give such notice as is practicable of such continuation.

§ 11-322 Postponement or cancellation of sales; installment agreements. a. It shall be lawful for the commissioner of finance, or his or her designee, to postpone or cancel any proposed sale of a tax lien or tax liens on property that shall have been advertised and noticed for sale prior to the date of sale. For purposes of this section, the words "date of sale" shall have the same meaning provided in subdivision e of section 11-320 of this chapter. The city shall not be liable for any damages as a result of cancellation or postponement of a proposed sale of a tax lien or tax liens, nor shall any cause of action arise from such cancellation or postponement.

b. In accordance with rules promulgated by the commissioners of finance and environmental protection, a property owner, or other eligible person, as defined by rule, acting on behalf of an owner, may enter into agreements with the departments of finance and environmental protection for the payment in installments of any delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents, or any other charges that are made a lien subject to the provisions of this chapter. The proposed sale of a tax lien or tax liens on property shall be cancelled when a property owner, or other eligible person acting on behalf of an owner, enters into an agreement with the respective agency for the payment of any such lien. Such rules shall also provide that such property owners or such other eligible persons be given information regarding eligibility for real property tax exemption programs prior to entering into such agreements. As used in this subdivision, the term "other eligible person" shall include a fiduciary, as defined in paragraph three of subdivision (a) of section 11-1.1 of the estates, powers and trusts law, acting with respect to the administration of the property of an estate of a decedent who owned the real property as to which an agreement under this subdivision is sought, or on behalf of a beneficiary of such real property from such estate. Any rules promulgated in accordance with this subdivision defining "other eligible person" shall include in such definition the means by which a beneficiary of real property of the estate of a decedent who owned real property as to which an agreement under this subdivision is sought meets the definition of "other eligible person". Such means shall include the furnishing of any death certificates or other relevant documents that substantiate the claim of a beneficiary that they are the legal owner of the property. Notwithstanding any other provision of this section, no more than one such agreement with each respective agency may be in effect for a property at any one time.

1. If payments required from a property owner, or other eligible person acting on behalf of an owner, pursuant to such an agreement are not made for a period of six months, such property owner, or such other eligible person, shall be in default of such agreement, and the tax lien or tax liens on the subject property may be sold, provided, however, that such default may be cured upon such property owner's, or such other eligible person's, bringing all installment payments and all current charges that are outstanding at the time of the default to a current status, which shall include, but not be limited to, any outstanding interest and fees, prior to the date of sale, provided, however, that such property owner, or such other eligible person, may elect to cure such default by entering into a new installment agreement with a down payment of twenty percent or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of sale. If such default is not cured prior to the date of sale, such property owner, and any other eligible person acting on behalf of an owner, shall not be eligible to enter into an installment agreement for the subject property for five years, unless there is a finding of extenuating circumstances by the department that entered into the installment agreement with the property owner or such other eligible person. Notwithstanding the prohibition against entering into an installment agreement for the subject property for five years, a property owner, or such other eligible person, who has defaulted on an installment agreement and whose lien has been sold and, subsequent to the sale of the lien, whose property on which the lien was sold is subject to another tax lien that is eligible to be sold, may elect to enter into another installment agreement with respect to such other lien before the end of such five-year period, provided that such property owner, or such other eligible person, makes a down payment of twenty percent or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of the sale. No such property owner, or such other eligible person, may make the election that is authorized pursuant to this paragraph to enter into an installment agreement with a down payment more than once for the subject property. The standards relating to defaults and cures of defaults of installment agreements set forth in this paragraph apply to installment agreements entered into pursuant to such election.

2. An installment agreement shall provide for payments by the property owner, or other eligible person acting on behalf of an owner, on a quarterly or monthly basis, for a period not less than eight years and not more than ten years, provided that a property owner, or other eligible person acting on behalf of an owner, may elect a period less than eight years. Except as provided in paragraph one of this subdivision, there shall be no down payment required upon the property owner's, or such other eligible person's, entering into the installment agreement with the respective department, but the property owner, or other eligible person acting on behalf of an owner, may elect to make a down payment. With respect to installment agreements with the commissioner of environmental protection, the determination of whether payments shall be on a quarterly or monthly basis shall be in the discretion of such commissioner, except as provided in paragraph three of this subdivision. With respect to installment agreements with the commissioner of finance, the

determination of whether payments shall be on a quarterly or monthly basis shall be in the discretion of the property owner, or other eligible person acting on behalf of an owner.

3. Beginning on January first, two thousand twelve, any property owner who has entered into an installment agreement with the commissioner of environmental protection pursuant to this subdivision and who has automated meter reading shall receive a consolidated monthly bill for current sewer rents, sewer surcharges and water rents and any payment due under such installment agreement.

4. No later than September first, two thousand eleven, the commissioners of finance and environmental protection shall promulgate rules governing installment agreements, including but not limited to, the terms and conditions of such agreements, the payment schedules, and the definition and consequences of default; no later than June first, two thousand fourteen, the commissioners of finance and environmental protection shall promulgate rules governing eligibility of owners or other eligible persons acting on behalf of owners to enter into installment agreements.

5. All installment agreements executed on or after March first, two thousand fifteen shall include a conspicuous statement that if payments required from a property owner pursuant to such an agreement are not made for a period of six months, such property owner shall be in default of such agreement, and the tax lien or tax liens on the subject property may be sold, provided, however, that such default may be cured upon such property owner's bringing all installment payments and all current charges that are outstanding at the time of the default to a current status, which shall include, but not be limited to, any outstanding interest and fees, prior to the date of sale. Such statement shall also include a notification that if such default is not cured prior to the date of sale, such property owner shall not be eligible to enter into an installment agreement for the subject property for five years, unless there is a finding of extenuating circumstances in accordance with rules promulgated by the department that entered into the installment agreement with the property owner. Such statement shall include the definition of extenuating circumstances. All installment agreements shall also include a statement describing the conditions under which the property owner, or any other eligible person acting on behalf of an owner, may be eligible, after default, to enter into another installment agreement after such default, in accordance with paragraph one of this subdivision.

6. If a property owner, or other eligible person acting on behalf of an owner, who has entered into an installment agreement with the department of finance, fails to make a payment pursuant to such agreement, then the department of finance shall, after the first missed payment, mail a letter to the property owner, or other eligible person acting on behalf of an owner, stating that such owner, or other eligible person, is at risk of being in default of such agreement. The letter shall be mailed after the first missed payment if the department has not received payment within two weeks of the due date.

c. No later than January thirty-first, two thousand twenty-four, and no later than every January thirty-first thereafter, the department of finance shall submit a report to the mayor and to the speaker of the council on real property with an assessed value of two hundred fifty thousand dollars or less for which: (A) the owner of such real property has entered into an agreement pursuant to this section for the payment in installments of real property taxes, assessments or other charges

that are made a lien subject to the provisions of chapter three of this title other than water rents, sewer rents, or sewer surcharges; and (B) such unpaid taxes are subject to the interest rate described in subdivision e of section 11-313 of this chapter for the preceding calendar year, including, but not limited to the following data:

1. the number of such agreements executed during the preceding calendar year;

2. the number of such agreements that were in effect on December thirty-first of the preceding calendar year;

3. the number of applications for such agreements that were received during the preceding calendar year, and the number of such applications that were not approved;

4. the average amount of property taxes and charges subject to such agreements; and

5. the number of such agreements that entered into default and the number of defaults that were cured.

§ 11-322.1 Hardship installment agreements. a. Definitions. For purposes of this section, the following terms have the following meanings:

1. Applicant. The term "applicant" means a property owner who files an application for an installment agreement under this section. Such term includes a property owner who has entered into an installment agreement after filing such an application.

2. Default. The term "default" means that an installment payment required under the installment agreement entered into under this section remains unpaid in whole or in part for six months from the date payment is required to be made, or any other tax or charge that becomes due on the property during the term of such agreement remains unpaid in whole or in part for six months.

3. Department. The term "department" means the department of finance.

4. Dwelling unit. The term "dwelling unit" means a unit in a condominium used primarily for residential purposes.

5. Fair market value. The term "fair market value" means the fair market value of property as determined by the department or the fair market value as determined by an appraisal obtained by the applicant pursuant to paragraph four of subdivision g of this section, provided that such appraisal shall be subject to review, and may be rejected, by the department.

6. Income. The term "income" means the adjusted gross income for federal income tax purposes as reported on an applicant's federal or state income tax return for the applicable income tax year, subject to any subsequent amendments or revisions; provided that if no such return was filed for the applicable income tax year, "income" means the adjusted gross income that would have been so reported if such a return had been filed.

7. Income tax year. The term "income tax year" means the most recent calendar year or fiscal year for which an applicant filed a federal or state income tax return.

8. Net equity. The term "net equity" means the fair market value of property minus any liabilities outstanding against such property, such as mortgages, outstanding property taxes, water and sewer charges, and any other liens on such property.

9. Property. The term "property" means real property classified as class one pursuant to section eighteen hundred two of the real property tax law or a dwelling unit in a condominium.

10. Property owner. The term "property owner" means an owner of real property classified as class one pursuant to section eighteen hundred two of the real property tax law or of a dwelling unit in a condominium, or other eligible person, as defined in subdivision (i) of section 40-03 of title nineteen of the rules of the city of New York, acting on behalf of such owner.

b. A property owner who satisfies the requirements described in subdivision c and d, e or f of this section may enter into an agreement with the department pursuant to this section for the payment in installments of real property taxes, assessments or other charges that are made a lien subject to the provisions of this chapter, except for sewer rents, sewer surcharges or water rents. The entry into an installment agreement pursuant to this section shall not suspend the accrual of interest charged against the property pursuant to section 11-301 of this chapter. A property owner may only have one installment agreement with the department in effect at any one time.

c. Eligibility requirements for an installment agreement under this section. To be eligible to enter into an installment agreement pursuant to this section, an applicant must demonstrate that the following requirements are met:

1. The applicant is a property owner.

2. The property shall have been the primary residence of the applicant for an uninterrupted period of not less than one year immediately preceding the date the application for the installment agreement is submitted and continues to be the primary residence of the applicant through the date the installment agreement is entered into. Hospitalization or a temporary stay in a nursing home or rehabilitation facility for a period of not more than three years shall not be considered a change in primary residence.

3. The combined income of the applicant and of all the additional property owners may not exceed eighty-six thousand four hundred dollars for the income tax year immediately preceding the date of the application for the installment agreement. The department shall promulgate rules that establish a process for an applicant to seek an exception from the requirement that income information from all additional property owners be provided in cases of hardship.

d. Eligibility requirement for senior low-income installment agreement. In addition to the requirements set forth in subdivision c of this section, to be eligible to enter into a senior low-income installment agreement pursuant to subdivision l of this section, an applicant must be sixty-five years of age or older when the application is submitted.

e. Eligibility requirement for fixed length income-based installment agreement. To be eligible to enter into a fixed length income-based installment agreement pursuant to subdivision m of this section, an applicant must satisfy the requirements set forth in subdivision c of this section.

f. Eligibility requirements for extenuating circumstances income-based installment agreement. In addition to the requirements set forth in subdivision c of this section, for an applicant to be eligible to enter into an extenuating circumstances income-based installment agreement pursuant to subdivision n of this section, the department must make a finding of extenuating circumstances pursuant to the process described in paragraph four of subdivision (e) of section 40-03 of title nineteen of the rules of the city of New York.

g. Initial application procedure. 1. An initial application for an installment agreement under this section shall include:

(a) for installment agreements that provide for the payment of taxes and charges that will accrue after the date of the installment agreement, a title search identifying all mortgages and other liens on the property; and

(b) the signature of a primary resident of the property, and if such primary resident does not hold an ownership interest of at least fifty percent in the subject property, the signature of any other owner of the property who, in combination with such primary resident, holds an ownership interest of at least fifty percent in such property, consenting to the application for an installment agreement.

2. A complete application must be submitted to, and approved by, the department.

3. An applicant may select a monthly or quarterly payment schedule and may also select the amount that is required to be paid under the applicable installment agreement pursuant to the options available pursuant to subdivision l, m or n of this section.

4. An applicant who is the property owner of a dwelling unit in a condominium may submit an appraisal obtained by such applicant of the fair market value of such dwelling unit provided that:

(a) the valuation date of such appraisal is a date within, and such appraisal shall have been prepared no more than, twelve months prior to submission of an application;

(b) the cost of such appraisal shall be borne by such applicant; and

(c) the cost of such appraisal may not be included in the amount subject to the installment agreement.

h. Renewal. 1. An installment agreement under this section shall terminate unless an applicant files a renewal application each year. At least sixty days before one year from the date such installment agreement was entered into or renewed, the department shall mail each applicant a renewal application, provided, however, that upon any such renewal application being made by the applicant, any installment agreement then in effect with respect to such applicant shall be deemed renewed until such time as the department shall have found such applicant to be either eligible or ineligible for the renewal of the installment agreement but in no event for more than six additional months.

2. To renew an installment agreement under this section, an applicant must submit a renewal application to the department on or before one year from the date such installment agreement was entered into and each year thereafter for which renewal is sought. To be eligible to renew such agreement, an applicant must demonstrate that:

(a) the property continues to be the primary residence of such applicant and such residence has been uninterrupted since the date the initial installment agreement was entered into; and

(b) the combined income of such applicant and of all the additional property owners does not exceed fifty-eight thousand three hundred ninety-nine dollars for the income tax year immediately preceding the date of the renewal of such installment agreement, except that an applicant for the renewal of a fixed length income-based installment agreement pursuant to subdivision m of this section is not required to submit income information.

i. Effects of installment agreement on tax lien and tax lien sale. 1. The execution of an installment agreement pursuant to this section shall not suspend the accrual of liens, interest and other charges against the property, which continue to accrue in accordance with applicable law.

2. A property for which an application has been submitted that contains proof of income and, for a senior low-income installment agree-

ment described in subdivision l of this section, proof of age, and that is signed, but is otherwise incomplete, shall be withdrawn from the next tax lien sale. Such property, however, may be included in the tax lien sale subsequent to the next tax lien sale if a completed application is not submitted within forty-five days from the date of the additional information request notice sent to the applicant by the department or if the completed application is denied.

j. Amount subject to installment agreement. 1. Each approved installment agreement shall set forth terms of repayment, including (a) the frequency of payments, (b) the percentage of the taxes and charges that forms the basis of the required payment for the senior low-income installment agreement described in subdivision l of this section, or the percentage of the combined income of the property owners for the income tax year immediately preceding the initial application that forms the basis of the required payment for the installment agreement for the fixed length income-based and the extenuating circumstances income-based installment agreements described in subdivisions m and n respectively, (c) the payment schedule, and (d) the payment amount.

2. A lien sold in a tax lien sale before the date of an application for an installment agreement is not eligible to be included in an installment agreement under this section.

3. The applicant may choose to include the cost of the title search required to be submitted with an application pursuant to subparagraph (a) of paragraph one of subdivision g of this section in the amount subject to the installment agreement. If an applicant chooses to include such cost, the applicant may either select a title company to conduct the required search and present documentation to the department of the cost, or direct the department to use a title company selected by the department. The department shall pay the cost of the title search and be reimbursed by the applicant through the addition of the cost to the amount subject to the installment agreement. The applicant shall make such reimbursement in the first year of the installment agreement, in monthly or quarterly payments, consistent with the payment frequency selected for the installment agreement. The cost of the title search shall bear interest at the same rate as the interest on unpaid real property tax as provided in section 11-224.1 of this title.

4. (a) Any time the amount of the liens on a property subject to an installment agreement under this section exceeds twenty-five percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against the property that exceed twenty-five percent of the net equity in the property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(b) Notwithstanding subparagraph (a) of this paragraph and provided that section five hundred eighty-one of the real property tax law is in effect in the same form as such section was in effect as of the effective date of this section, for property that is a dwelling unit in a condominium subject to an installment agreement under this section and for which an appraisal has not been obtained pursuant to paragraph four of subdivision g of this section, any time the amount of the liens subject to such agreement exceeds fifty percent of the net equity in such property, the applicant shall pay all taxes and charges imposed against such property that exceed fifty percent of the net equity in such property as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement. For property that is a dwelling unit in a condominium and for which an appraisal has been obtained pursuant to paragraph four of subdivision g of this section,

any time the amount of the liens subject to an installment agreement under this section exceeds the higher of (i) fifty percent of the net equity in such property based on the fair market value determined by the department; or (ii) twenty-five percent of the net equity in such property based on the fair market value determined by the appraisal obtained by the applicant, the applicant shall pay all taxes and charges imposed against such property that exceed the higher of the amounts described by clauses (i) and (ii) of this subparagraph as such taxes and charges become due, in addition to the payment amount set forth in the installment agreement.

(c) The department shall provide each applicant with a written projection at the time the installment agreement is entered into as to when the twenty-five or fifty percent threshold, as determined pursuant to subparagraphs (a) and (b) of this paragraph, will be exceeded. The department shall also notify each property owner in writing when the amount of the liens exceeds such threshold. Failure by the department to provide an applicant with such projection or to notify a property owner when the amount of the liens exceeds the applicable threshold, however, shall not affect the validity of the installment agreement that has been entered into, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to provide such projection or such notification.

5. If at any time the department determines that the fair market value of a property subject to an installment agreement under this section has increased, an applicant may request that the net equity in such property be recalculated and the net equity amount included in such installment agreement be adjusted to reflect the recalculated net equity in such property.

6. If the combined income of all of the property owners exceeds fifty-eight thousand three hundred ninety-nine dollars for the income tax year immediately preceding the date of making a renewal application pursuant to subdivision h of this section, the applicant shall pay all taxes and charges imposed against the property after the date of such renewal application as such taxes and charges become due, in addition to the payment amount set forth in such installment agreement.

k. Termination of installment agreement. 1. An installment agreement shall be terminated when any of the following occurs:

(a) The property whose liens are the subject of such installment agreement is no longer the primary residence of the applicant. An applicant whose installment agreement has been terminated because of such reason may apply to enter into an installment agreement pursuant to section 11-322 of this chapter.

(b) The fixed term of the installment agreement expires. An applicant whose installment agreement has been terminated because of such expiration may apply to enter into an installment agreement pursuant to section 11-322 of this chapter or to this section.

(c) The applicant is deceased.

(d) The applicant opts out of an installment agreement without a fixed term as described in paragraph one of subdivision l of this section. An applicant who opts out of such agreement may apply to enter into an installment agreement pursuant to section 11-322 of this chapter or to this section.

(e) The applicant does not file a timely renewal application in accordance with the provisions of subdivision h of this section.

(f) The applicant is in default and has not cured such default as provided in subparagraph (a) of paragraph three of this subdivision prior to the next tax lien sale.

(g) The applicant has defaulted on the installment agreement and has cured such default by entering into a new installment agreement pursuant to clause two or three of subparagraph (a) of paragraph three of this subdivision.

2. If an installment agreement is terminated, all taxes and charges that accrued before such termination are required to be paid. If such taxes and charges are not paid within nine months of such termination, the tax lien or tax liens on such property may be sold. Notwithstanding the preceding sentence, if an agreement is terminated pursuant to subparagraph (c) of paragraph one of this subdivision, a surviving spouse has eighteen months from the death of the applicant to pay all taxes and charges on such property before the tax lien or tax liens on such property may be sold. If such surviving spouse is a property owner he or she may enter into a separate installment agreement pursuant to section 11-322 of this chapter or subdivision l, m or n of this section, as long as he or she meets the eligibility requirements for the respective installment agreement.

3. (a) An applicant may cure a default by:

(i) bringing all installment payments and all current charges, including but not limited to any interest and fees, that are outstanding at the time of the default to a current status prior to the date of the tax lien sale;

(ii) entering into a new installment agreement with a down payment of twenty percent or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of such sale; or

(iii) entering into a new installment agreement under this section if the department has made a finding of extenuating circumstances pursuant to the process described in paragraph four of subdivision (e) of section 40-03 of title nineteen of the rules of the city of New York.

(b) If a default is not cured prior to the date of the tax lien sale, such applicant shall not be eligible to enter into an installment agreement for the subject property for five years, unless the department has made a finding of extenuating circumstances pursuant to the process described in paragraph four of subdivision (e) of section 40-03 of title nineteen of the rules of the city of New York.

(c) Notwithstanding the prohibition in subparagraph (b) of this paragraph against entering into an installment agreement for the subject property for five years, an applicant who has defaulted on an installment agreement and whose lien has been sold and, after the sale of the lien, whose property on which the lien was sold is subject to another tax lien that is eligible to be sold, may apply to enter into another installment agreement with respect to such other lien before the end of such five-year period, provided that such applicant makes a down payment of twenty percent or more, of all delinquent real property taxes, assessments, sewer rents, sewer surcharges, water rents and other charges that are made a lien subject to the provisions of this chapter, including any outstanding interest and fees, prior to the date of the tax lien sale. An applicant shall not be eligible to enter an installment agreement with a down payment under this subparagraph more than once for the subject property.

(d) If a property owner who has entered into an installment agreement with the department pursuant to this section fails to make a payment pursuant to such agreement, the department shall, after the first missed payment, mail a letter or send an email, when such address is known, to the property owner stating that such owner is at risk of being in default of such agreement. The letter or email shall be sent after the first missed payment if the department has not received payment within two weeks of the due date. Failure by the department to mail such letter or send such email, however, shall not affect the validity of the installment agreement that has been entered into, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to mail such letter or send such email.

l. Senior low-income installment agreement. 1. At the option of the applicant, a senior low-income installment agreement may provide for payments for a fixed period of time or for payments without a fixed period of time. If the applicant selects an installment agreement with a fixed time period, the applicant may select the term of the agreement. The applicant may switch from an installment agreement without a fixed time period to an installment agreement with a fixed time period, or from an installment agreement with a fixed time period to an installment agreement without a fixed time period, at any point.

2. A senior low-income installment agreement shall provide for the payment of both a percentage of taxes and charges that have accrued, if any, and a percentage of taxes and charges that will accrue after the date of the installment agreement. The applicant may elect to pay an installment amount based on zero percent, twenty-five percent, fifty percent or seventy-five percent of the annual taxes and charges that have accrued, if any, and that will accrue. If the applicant selects an agreement with a fixed time period, the required payment shall be based on the percentage selected and the term selected. If the applicant selects an agreement without a fixed time period, the required payment shall be based on the percentage selected for prospective taxes and charges and a partial or full payment of the percentage of taxes and charges that have accrued, if any. The applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

m. Fixed length income-based installment agreement. 1. At the option of the applicant, a fixed length income-based installment agreement pursuant to this subdivision may provide for the payment of (a) only taxes and charges that have accrued or (b) taxes and charges that have accrued and taxes and charges that will accrue over the next fiscal year. If option (a) is selected, the applicant shall pay all taxes and charges that become due on the property after the installment agreement is entered into in addition to the payment schedule provided in the installment agreement. If option (b) is selected, the applicant shall pay all taxes and charges that will accrue on the property after the installment agreement has been in effect for one year in addition to the payment schedule provided in the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for such installment agreement. The applicant may select a percentage of two percent, four percent, six percent or eight percent of such combined income. The installment payment shall be calculated by dividing the annual payment

amount by twelve or four, depending on whether a monthly or quarterly payment schedule is selected. The term of the agreement shall be calculated by dividing the taxes and charges included in the agreement pursuant to paragraph one of this subdivision by the installment payment determined by the calculation described in this paragraph.

3. An applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

n. Extenuating circumstances income-based installment agreement. 1. An extenuating circumstances income-based installment agreement shall provide for the payment, during the period of such agreement, of a percentage of taxes and charges that have accrued on the property and taxes and charges that accrue after the date of the installment agreement.

2. The annual payment amount required pursuant to an installment agreement described by this subdivision shall be based on a percentage of the combined income of all of the property owners for the income tax year immediately preceding the initial application for an installment agreement. The applicant may select a percentage of two percent, four percent, six percent, or eight percent of such combined income. Such installment payment shall be calculated by dividing the annual payment amount by twelve or four, depending on whether a monthly or quarterly payment schedule is selected. The installment agreement shall be for a term of one year but may be extended on a yearly basis if the department determines that the extenuating circumstances continue.

3. An applicant may adjust the payment percentage at any point during the installment agreement, but may not make more than one such adjustment during any six-month period.

o. After an applicant has entered into an installment agreement with the department pursuant to this section, the department shall record the entry of such agreement on the automated city register information access system. Failure by the department to record such agreement, however, shall in no manner affect the validity of such agreement, nor shall any claim arise or exist against the commissioner of finance or any officer or agency of the city by reason of such failure to record.

p. All installment agreements executed pursuant to this section on or after the effective date of this subdivision shall include:

1. a statement that if payments required from an applicant pursuant to such an agreement are not made for a period of six months, such applicant shall be in default of such agreement, and the tax lien or tax liens on the subject property may be sold, provided, however, that such default may be cured upon such applicant's bringing all installment payments and all current charges that are outstanding at the time of the default to a current status, which shall include, but not be limited to, any outstanding interest and fees, prior to the date of the tax lien sale;

2. a notification that if such default is not cured prior to the date of the tax lien sale, such property owner shall not be eligible to enter into an installment agreement for the subject property for five years, unless a finding of extenuating circumstances has been made by the department pursuant to the process described in paragraph four of subdivision (e) of section 40-03 of title nineteen of the rules of the city of New York;

3. the definition of extenuating circumstances pursuant to such paragraph;

4. a statement describing the conditions under which the property owner may be eligible, after default, to enter into another installment agreement in accordance with paragraph three of subdivision k of this section; and

5. the date by which the applicant must submit a renewal application each year.

q. Every January thirty-first, the department shall submit to the speaker of the council a report on the usage of the installment agreements set forth in this section in the prior calendar year, including, but not limited to the following data, disaggregated by installment agreement type:

1. the number of new installment agreements executed;

2. the number of installment agreements in effect on December thirty-first of each year;

3. the number of applications for installment agreements received, the number of applications not approved, and the reasons for disapproval;

4. for the senior low-income installment agreements, the number of new installment agreements executed at zero percent, twenty-five percent, fifty percent and seventy-five percent;

5. for the fixed length and extenuating circumstances income-based installment agreements, the number of new installment agreements executed at two percent, four percent, six percent or eight percent;

6. the average amount of property taxes and charges addressed by the installment agreement;

7. the number of installment agreements that entered into default, the number of defaults that were cured and the method by which they were cured;

8. the number of installment agreements that were terminated, by reason of termination;

9. the number of installment agreements that were renewed, including whether such renewal occurred before or during the six-month period described in paragraph one of subdivision h of this section; and

10. the number of installment agreements where the amount of liens on the subject property exceeded the applicable percent of the net equity in such property.

r. The department shall publicize the availability of the installment agreements set forth in this section so as to maximize public awareness of such agreements.

§ 11-323 Commissioner of finance to conduct sale. The commissioner of finance or his or her designee shall conduct the sales hereinbefore provided to be made, or the commissioner may, in his or her discretion, contract with any other person to conduct competitive sales of tax liens.

§ 11-324 Deposits and forfeits. The commissioner of finance may require from each purchaser of a tax lien or tax liens, in cash or cash equivalent in immediately available funds in the discretion of such commissioner, a deposit of at least five per cent of the cash portion of the sale price of the tax lien or tax liens purchased by him or her, as liquidated damages, on a date determined by the commissioner of finance. The balance shall be paid to the commissioner of finance in cash or cash equivalent in immediately available funds or such other consideration acceptable to the commissioner of finance or any combination thereof, in his or her discretion. For purposes of this chapter "cash equivalent" shall mean a cashier's check, bank check, certified check, money order, or such other paper instrument as the commissioner of finance shall prescribe. Such deposit and balance may also be paid by electronic funds

transfer. For purposes of this chapter, "electronic funds transfer" shall mean any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated using a format prescribed by the commissioner of finance. A tax lien certificate shall be made and delivered to the purchaser upon payment of the sale price. In case any purchaser shall default in any obligation under the terms and conditions of the tax lien sale, then the amount deposited by the purchaser shall be forfeited to the city, and the tax lien or tax liens upon the property affected by such purchase may be sold again at the discretion of the commissioner of finance pursuant to section 11-319 of this chapter. All deposits forfeited as aforesaid shall be paid into the general fund.

§ 11-327 Tax lien certificates; operation. A tax lien certificate shall operate to transfer and assign the tax lien upon the property described therein for the taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any notices and advertisements given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon.

§ 11-328 Contents of a tax lien certificate. A tax lien certificate shall contain a transfer and assignment by the city of the tax lien sold to the purchaser, the date of the sale, the aggregate amount of the tax lien so transferred, and the items of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon comprising the tax lien, the rate of interest which the tax lien certificate will bear, the date when the amounts under such tax lien are due pursuant to section 11-332 of this chapter, and a description of the property affected by the tax lien, which description shall include the designation of such property on the tax map, by its lot number and the number of the block in which it is contained, and such other identifying information as the commissioner of finance or his or her designee may deem proper to add. For purposes of this section, the words "date of sale" shall have the same meaning provided in subdivision (e) section 11-320 of this chapter. Each tax lien certificate shall be executed by the commissioner of finance or his or her designee by manual or facsimile signature and shall be acknowledged by the manual or facsimile signature of the officer subscribing the same in the manner in which a deed is required to be acknowledged to be recorded in the county in which the property affected is situated. The commissioner of finance may designate an agent for purposes of authenticating any such signature.

§ 11-330 Record of tax lien certificates. The commissioner of finance or his or her designee, shall keep in his or her office a public record of sales of tax liens, and a copy of each tax lien certificate issued by such commissioner or his or her designee. Assignments of tax lien certificates duly acknowledged may be filed and recorded in the office of the commissioner of finance or his or her designee. A tax lien certificate and any assignment thereof, duly acknowledged, shall be deemed conveyances under article eight of the real property law, and may be recorded in the office of the recording officer of any county in which the real property which it affects is situated. Tax lien certificates and all assignments thereof shall be recorded by recording offi-

cers in the same manner as mortgages and assignments thereof, but without payment of tax under article eleven of the tax law. Neither the tax lien nor the rights transferred or created by a tax lien certificate shall be impaired by failure of a recording officer to record a tax lien certificate made by the city through the commissioner of finance or his or her designee.

§ 11-331 Records to be competent evidence. The record in the office of the commissioner of finance or his or her designee of sales of tax liens, of a tax lien certificate, and of a copy of a tax lien certificate, and of an assignment of a tax lien certificate, a record of a tax lien certificate in the office of a recording officer, and of an assignment of a tax lien certificate, duly acknowledged, in the office of a recording officer, shall each be evidence in any court in the state without further proof. A transcript of any record enumerated in this section, duly certified, shall be evidence in any court in the state with like effect as the original instrument of record.

§ 11-332 Rights of purchaser of tax lien. a. Any purchaser of a tax lien or tax liens shall stand in the same position as the city and shall have all the rights and remedies that the city would have had if the tax lien or tax liens had not been sold.

b. The aggregate amount of each tax lien transferred pursuant to this chapter shall be due and payable one year from the date of the sale. Until such aggregate amount is fully paid and discharged, the holder of the tax lien certificate shall be entitled to receive interest on such aggregate amount from the date of sale, and semi-annually at the rate of interest applicable in accordance with section 11-319 of this chapter. If such aggregate amount is partially paid, the holder of the tax lien certificate shall be entitled to receive interest only on the amount that remains unpaid. Notwithstanding the foregoing sentence, the holder of the tax lien certificate shall be entitled to receive and retain a surcharge equal to five percent of the lien arising pursuant to the provisions of this chapter as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, and interest and penalties thereon. Any amounts due shall be paid directly to the holder of the tax lien certificate. At the option of the holder of any tax lien certificate the aggregate amount thereof shall become subject to foreclosure after default in the payment of interest for thirty days or after default for six months after the date of sale stated in the tax lien certificate in accordance with subdivision (d) of section 11-320 and section 11-328 of this chapter in the payment of any taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter, or the interest or penalties thereon which become a lien on or after the date of sale of the tax lien transferred by such tax lien certificate. At his or her option, the holder of the tax lien certificate may satisfy any such subsequent tax lien on the same property, and shall, by virtue of such satisfaction, be deemed to be in the same position as if he or she were a purchaser of a tax lien certificate for such subsequent tax lien, provided, however, that such holder shall not be entitled to receive a five percent surcharge on such subsequent tax lien pursuant to this section. The rate of interest on such subsequent lien shall be the rate of interest applicable to tax lien certificates pursuant to section 11-319 of this chapter. The commissioner of finance or his or her desig-

nee, at the request of the purchaser of such subsequent lien, shall issue a tax lien certificate for such lien pursuant to sections 11-327 and 11-328 of this chapter. Upon issuance of such certificate, the commissioner of finance or his or her designee shall provide such notice as is required pursuant to section 11-320(d) of this chapter. Failure to provide notice pursuant to this subdivision shall not affect the validity of any transfer of a subsequent tax lien or tax liens pursuant to this subdivision. Any person having a legal or beneficial interest in property affected by a tax lien certificate may satisfy the same at any time upon payment of the amounts due with interest at the rate applicable in accordance with section 11-319 of this chapter. Upon satisfaction of the tax lien, the holder thereof shall issue to the person who satisfied such tax lien a certificate of discharge, certifying that the tax lien has been paid or has been otherwise satisfied, in such recordable form as has been approved by the commissioner of finance. For purposes of this section, the words "date of sale" shall have the same meaning provided in subdivision (e) of section 11-320 of this chapter.

§ 11-333 Discharge of tax lien. A tax lien sold pursuant to the provisions of this chapter may be discharged by presenting the certificate of discharge issued by the holder of the tax lien pursuant to section 11-332 of this chapter to the recording officer of the county in which the real property that it affects is situated, and any recording officer to whom such certificate of discharge is presented shall record the same.

§ 11-334 Exemption from taxation. Tax liens and tax lien certificates shall be exempt from taxation by the state or any local subdivisions thereof, except from the taxes imposed by article ten of the tax law. The real property affected by any tax lien shall not be exempt from taxation by reason of this section.

§ 11-335 Foreclosure of tax liens. If the amount of any tax lien which shall have been transferred by a tax lien certificate shall not be paid when under its terms and the provisions of section 11-332 of this chapter such amount shall be due, the holder of such tax lien certificate may maintain an action in the supreme court to foreclose such tax lien. The holder of such tax lien certificate shall notify the commissioner of finance or his or her designee in writing whenever he or she commences such action at the time of filing of such action, and shall notify the commissioner of finance in writing of the resolution of such action, including any settlement of such action, within thirty days of such resolution. In an action to foreclose a tax lien any person shall be a proper party of whom the plaintiff alleges that such person has or may have or that the plaintiff has reason to believe that such person has or may have an interest in or claim upon the property affected by the tax lien. A plaintiff in an action to foreclose a tax lien shall recover reasonable attorney's fees for maintaining such action. Except as otherwise provided in this chapter an action to foreclose a tax lien shall be regulated by the provisions of the civil practice law and rules and by all other provisions of law, and rules of practice applicable to actions to foreclose mortgages on real property. The people of the state of New York or the city of Staten Island may be made party to an action to foreclose a tax lien in the same manner as a natural person. Where the people of the state of New York or the city of Staten Island are made a party defendant the complaint shall set forth, in addition to the other matters required to be set forth by law, detailed facts showing the particular nature of the interest in or the lien on such property of the people of the state of New York or the city of Staten Island, and

detailed facts showing the particular nature of the interest in or the lien on such property which plaintiff has reason to believe that the people of the state of New York or the city of Staten Island have or may have in such property, and the reason for making the people of the state of New York or the city of Staten Island a party defendant. Upon failure to state such facts the complaint shall be dismissed as to the people of the state or the city of Staten Island.

§ 11-336 Pleading tax lien certificate. Whenever a cause of action, defense or counterclaim, is for the foreclosure of a tax lien, or is in any manner founded upon a tax lien or a tax lien certificate, the production in evidence of an instrument executed by the commissioner of finance or his or her designee in the form prescribed in section 11-328 of this chapter for a tax lien certificate subscribed by or in behalf of the commissioner of finance or his or her designee shall be presumptive evidence that the lien purported to be transferred by such an instrument was a valid and enforceable lien, and that it has been duly assigned to the purchaser, and it shall not be necessary to plead or prove any act, proceeding, notice or action, preceding the delivery of such tax lien certificate nor to establish the validity of the tax lien transferred by such tax lien certificate. If a party or person in interest in any such action or proceeding claims that a tax lien is irregular or invalid, or that there is any defect therein or that a tax lien certificate is irregular, invalid or defective, such invalidity, irregularity or defect must be specifically pleaded or set forth, and must be established affirmatively by the party or person pleading or setting forth the same.

§ 11-337 Judgment upon tax lien. In every action for the foreclosure of a tax lien, and in every action or proceeding in which a cause of action, defense or counterclaim is in any manner founded upon a tax lien or a tax lien certificate, such tax lien certificate and the tax lien which it transfers shall be presumed to be regular and valid and effectual to transfer to the purchaser named therein a valid and enforceable tax lien. Unless in such an action or proceeding such tax lien or tax lien certificate be found to be invalid, they shall be adjudged to be enforceable and valid, for the amount thereof and the interest to which the holder may be entitled and a tax lien transferred by a tax lien certificate effectual to transfer such tax lien to the purchaser named therein.

§ 11-338 Judgment of foreclosure of tax lien; sale. In an action to foreclose a tax lien, unless the defendants obtain judgment, the plaintiff shall be entitled to a judgment establishing the validity of the tax lien so far as the same shall not be adjudged invalid and of the tax lien certificate and directing the sale of the real, personal or mixed property affected thereby, or such part thereof as shall be sufficient to discharge the tax lien, or such items thereof as shall not be adjudged invalid together with the expense of the sale, and the costs of the action.

§ 11-339 City may purchase at sale. At a sale pursuant to judgment in an action to foreclose a tax lien or at any sale free of tax liens, the city, without authorization other than hereby given, may purchase any property that is the subject of the sale.

§ 11-340 Effect of judgment foreclosing tax lien. Every final judgment in an action to foreclose a tax lien shall be binding upon, and every conveyance upon a sale pursuant thereto, shall transfer to and vest in the purchaser all the right, title, interest and estate in and claim upon the real property affected by such judgment, of the plaintiff, each defendant upon whom the summons is served, each person claim-

ing from, through or under such a defendant by title accruing after the filing of notice of pendency of the action or after the entry of judgment and filing of the judgment roll in the proper county clerk's office, and each person not in being when the judgment is rendered, who afterwards may become entitled to a beneficial interest attaching to, or an estate or interest in such real property or any portion thereof, provided that the person presumptively entitled to such beneficial interest, estate or interest is a party to such action or bound by such judgment. So much of section three hundred seventeen of the civil practice law and rules as requires the court to allow a defendant to defend an action after final judgment shall not apply to an action to foreclose a tax lien. Delivery of the possession of real property affected by a judgment to foreclose a tax lien may be compelled in the manner prescribed in section two hundred twenty-one of the real property actions and proceedings law.

§ 11-341 Surplus. Any surplus of the proceeds of the sale, after paying the expenses of the sale, and all taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, any surcharge pursuant to section 11-332 of this chapter and interest and penalties thereon, including such amounts which accrued or became a lien on and after the date of sale of the tax lien or tax liens and up to and including the date of the sale of the property in foreclosure, and satisfying the amount of such tax lien or tax liens and interest and the costs of the action, must be paid into court, for the use of the person or persons entitled thereto. If any part of the surplus remains in court for the period of three months, and no application has been made therefor, the court must, and, if an application therefor is pending, the court may direct such surplus to be invested at interest, for the benefit of the person or persons entitled thereto, to be paid upon the direction of the court.

§ 11-342 Foreclosed tax lien not arrears. Any party to an action to foreclose a tax lien or any purchaser or any party in interest may give notice of such foreclosure to the city collector and after such notice the items which constituted the tax lien thus foreclosed shall not be entered by the city collector in any yearly assessment-roll, so long as the judgment of foreclosure of such lien remains in force.

§ 11-347 Corporation counsel to protect city in all proceedings relating to tax liens. It shall be the duty of the corporation counsel to protect the interest of the city in all matters, actions and proceedings relating to tax liens and tax lien certificates; to intervene on behalf of the city or to make the city a party to any action in which the corporation counsel believes it to be to the interest of the city so to do, by reason of any matter arising under or relating to any tax lien or tax lien certificate, or advertisement of sale of tax liens. The corporation counsel in his or her discretion may represent the purchaser of a tax lien or the holder of a tax lien certificate in any action in which the corporation counsel believes it to be in the interest of the city so to do, by reason of any matter arising under or relating to any tax lien or tax lien certificate, or advertisement of sale of tax liens. All costs recovered in any action or proceeding conducted or defended by the corporation counsel pursuant to this section shall belong to the city and shall be collected, applied and disposed of in the same manner as are other costs recovered by the city.

§ 11-349 Lost tax lien certificate; delivery of duplicate in case of. Whenever any tax lien certificate given by the commissioner of finance or his or her designee, as in this chapter provided, shall be lost, the commissioner of finance or his or her designee may receive evidence of such loss, and on satisfactory proof of the fact may direct the execution and delivery of a duplicate to such person or persons who shall appear entitled thereto, and may also, in the commissioner's discretion, require a bond of indemnity to the city.

§ 11-350 Affidavits of publication and mailing of necessary notices to be preserved. It shall be the duty of the commissioner of finance or his or her designee to procure, preserve and register at the department of finance, affidavits of the publication and mailing of all the advertisements and notices by this chapter required to be published and mailed, and such affidavits shall be presumptive proof of such publication and mailing in all the courts of this state.

§ 11-353 Cancellation of taxes, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon. Whenever the city has heretofore or shall hereafter become vested with title to property acquired by virtue of tax enforcement foreclosure proceedings, or by deed in lieu thereof, the commissioner of finance, or his or her designee, shall cancel all unpaid real estate taxes, tax lien certificates, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon upon which the foreclosure action was predicated. Upon the sale of such property and the conveyance of the title thereof by the city, the commissioner of finance, or his or her designee, shall cancel all unpaid real estate taxes, assessments, water rents, sewer rents, sewer surcharges, any charges that are made a lien subject to the provisions of this chapter, the costs of any advertisements and notices given pursuant to this chapter, any other charges that are due and payable, a surcharge pursuant to section 11-332 of this chapter, and interest and penalties thereon that shall have accrued during the period between the date of the last unpaid item upon which the foreclosure action was predicated and the date of conveyance of title. The commissioner of finance, or his or her designee, shall enter notations of such cancellations in the appropriate records for each such parcel of property.

§ 11-354 Additional method to enforce payment of tax liens held by the city. (a) Notwithstanding any other provision of law and notwithstanding any omission to hold a tax lien sale, whenever any tax, assessment, sewer rent, sewer surcharge, water rent, any charge that is made a lien subject to the provisions of this chapter or chapter four of this title, or interest and penalties thereon, has been due and unpaid for a period of at least one year from the date on which the tax, assessment or other legal charge represented thereby became a lien, or in the case of any class one property or any class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, or in the case of a multiple dwelling owned by a company organized pursuant to article eleven of the private housing

finance law with the consent and approval of the department of housing preservation and development, for a period of at least three years from the date on which the tax, assessment or other legal charge became a lien, the city, as owner of a tax lien, may maintain an action in the supreme court to foreclose such lien. Such action shall be governed by the procedures set forth in section 11-335 of this chapter; provided, however, that such parcel shall only be sold to the highest responsible bidder. Such purchaser shall be deemed qualified as a responsible bidder pursuant to such criteria as are established in rules promulgated by the commissioner of finance after consultation with the commissioner of housing preservation and development.

(b) At a sale pursuant to a judgment in an action brought pursuant to subdivision (a) of this section to foreclose a tax lien, the city may purchase property subject to such lien in accordance with the provisions of section 11-339 of this chapter.

(c) The provisions of this section shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure of tax liens shall be in addition to any other remedies or procedures provided by any general, special or local law. Notwithstanding any other provision of this code, the commissioner of finance shall be authorized to agree to forebear to commence an in rem action against property which has an outstanding and unredeemed tax lien certificate previously sold by the city and held by a third party pursuant to this chapter.

§ 11-355 Reporting. The commissioner of finance shall submit an annual report to the council concerning the sale or sales of tax liens during the preceding year pursuant to this chapter. Such report shall include the following information regarding such sale or sales: a list of properties for which a tax lien or tax liens has or have been sold, including identification of the particular tax lien or tax liens sold; the proceeds received from the sale or sales of tax liens; identification of the purchaser of and servicer for the tax lien or tax liens sold; a report of servicer activities during the immediately preceding year; the redemption rate for tax liens that have been sold; the delinquency rate for real property taxes for the immediately preceding year; and any other information pertinent to the sale of tax liens that may be requested by the council and which is not made confidential pursuant to section 11-208.1 of this code. Upon request by the council, information provided in such report shall be arranged by community board. In addition to such report, the commissioner of finance shall from time to time provide any other information pertinent to the sale of tax liens that may be requested by the council and which is not made confidential pursuant to section 11-208.1 of the code, including updated information regarding the sale or sales of tax liens pursuant to this chapter. In addition to such report, no later than August thirty-first, two thousand twenty, the commissioner shall provide to the council a report listing all properties on which liens have been sold during the period from January first, two thousand fifteen through December thirty-first, two thousand nineteen. The report shall indicate, based on records in the office of the register, whether a transfer of or mortgage recorded on any of such properties has occurred during such period after the sale of any tax lien sold during such period.

## CHAPTER 4
## TAX LIEN FORECLOSURE BY ACTION IN REM

§ 11-401 Definitions. Whenever used in this chapter, the following terms shall mean:

1. "Tax lien." The lien arising as a result of the nonpayment of taxes, assessments, sewer rents, sewer surcharges, water rents, any other charges that are made a lien subject to the provisions of this chapter or chapter three of this title, interest and penalties thereon, and the right of the city to receive such amounts.

2. "Court." The supreme court.

3. "Class." Any class of real property defined in subdivision one of section eighteen hundred two of the real property tax law, and any subclassification of class two real property where such subclassification is established by rule of the commissioner of finance promulgated pursuant to this subdivision.

4. "Distressed property." Any parcel of class one or class two real property that is subject to a tax lien or liens that result from an environmental control board judgment against the owner of such parcel for a building code violation with a lien or liens to value ratio, as determined by the commissioner of finance, equal to or greater than twenty-five percent or any parcel of class one or class two real property that is subject to a tax lien or liens with a lien or liens to value ratio, as determined by the commissioner of finance, equal to or greater than fifteen percent and that meets one of the following two criteria:

i. such parcel has an average of five or more hazardous or immediately hazardous violations of record of the housing maintenance code per dwelling unit; or

ii. such parcel is subject to a lien or liens for any expenses incurred by the department of housing preservation and development for the repair or the elimination of any dangerous or unlawful conditions therein, pursuant to section 27-2144 of this code, in an amount equal to or greater than one thousand dollars.

§ 11-401.1 Procedures for distressed property. a. The commissioner of finance shall, not less than sixty days preceding the date of the sale of a tax lien or tax liens, submit to the commissioner of housing preservation and development a description by block and lot, or by such other identification as the commissioner of finance may deem appropriate, of any parcel of class one or class two real property on which there is a tax lien that may be foreclosed by the city. The commissioner of housing preservation and development shall determine, and direct the commissioner of finance, not less than ten days preceding the date of the sale of a tax lien or tax liens, whether any such parcel is a distressed property as defined in subdivision four of section 11-401 of this chapter. Any tax lien on a parcel so determined to be a distressed property shall not be included in such sale. In connection with a subsequent sale of a tax lien or tax liens, the commissioner of finance may, not less than sixty days preceding the date of the sale, resubmit to the commissioner of housing preservation and development a description by block and lot, or by such other identification as the commissioner of finance may deem appropriate, of any parcel of class one or class two real property that was previously determined to be a distressed property pursuant to this paragraph and on which there is a tax lien that may be included in such sale. The commissioner of housing preservation and development shall determine, and direct the commissioner of finance, not less than ten days preceding the date of the sale, whether such parcel remains a distressed property. If the commissioner of housing preservation and development determines that the parcel is not a distressed property, then the tax lien on the parcel may be included in the sale.

b. The commissioner of housing preservation and development may periodically review whether a parcel of class one or class two real property that is subject to subdivision c of this section or subdivision j of section 11-412.1 of this chapter remains a distressed property. If the commissioner determines that the parcel is not a distressed property as defined in subdivision four of section 11-401 of this chapter, then the parcel shall not be subject to such subdivisions.

c. Any parcel so determined to be a distressed property shall be subject to an in rem foreclosure action, or in the case where the commissioner of finance does not commence such action the commissioner of housing preservation and development shall evaluate such parcel and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The commissioner of housing preservation and development, in his or her discretion, shall cause an inspection to be conducted on any parcel so determined to be a distressed property. In addition, the commissioner of housing preservation and development shall submit to the council a list of all parcels so determined to be a distressed property within thirty days from the date such parcels are identified as a distressed property.

§ 11-402 Applicability of procedure of foreclosure in rem. a. The provisions of this chapter shall be applicable only to tax liens owned by the city.

b. The provisions of this chapter shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this chapter shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this chapter, in respect to any such tax lien.

§ 11-402.1 Inapplicability of article eleven of the real property tax law to the enforcement of the collection of delinquent taxes. In accordance with section six of chapter six hundred two of the laws of nineteen hundred ninety-three and subdivision two of section eleven hundred four of the real property tax law, it is hereby provided that the collection of delinquent taxes shall continue to be enforced pursuant to chapters three and four of title eleven of this code and other related provisions of the charter and this code as such chapters three and four and such related provisions may from time to time be amended and that article eleven of the real property tax law shall not be applicable to the city.

§ 11-403 Jurisdiction. The supreme court shall have jurisdiction of actions authorized by this chapter.

§ 11-404 Foreclosure by action in rem. a. Whenever it shall appear that a tax lien or tax liens has or have been due and unpaid for a period of at least one year from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien or tax liens, except as provided in subdivision b of this section or otherwise provided by this chapter, may be summarily foreclosed in the manner provided in this chapter, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a sale of a tax lien or tax liens prior to such foreclosure. A bill of arrears or any other instrument evidencing such tax lien or tax liens shall be

evidence of the fact that the tax lien or tax liens represented thereby has not or have not been paid to the city or sold by it.

b. A tax lien on any class one property or any class two property that is a residential condominium or residential cooperative, as such classes of property are defined in subdivision one of section eighteen hundred two of the real property tax law, and on any multiple dwelling owned by a company organized pursuant to article eleven of the private housing finance law with the consent and approval of the department of housing preservation and development, shall not be foreclosed in the manner provided in this chapter until such tax lien has been due and unpaid for a period of at least three years from the date on which the tax, assessment or other legal charge represented thereby became a lien.

§ 11-405 Preparation and filing of lists of delinquent taxes. a. The commissioner of finance from time to time shall prepare a list, to be known as a "list of delinquent taxes", of all parcels, or all parcels within a particular class or classes, that are within a particular section of a tax map or portion of a section of a tax map of the city and on which there are tax liens subject to foreclosure pursuant to this chapter, provided, however, that no such portion shall be smaller than a block, as defined in subdivision d of section 11-204 of subchapter one of chapter two of this title. Every such list shall bear a caption containing the in rem action number of the city's tax foreclosure proceeding, the section of a tax map or portion of a section of a tax map, and where the action covers less than all parcels in a section of a tax map or portion of a section of a tax map, the particular class or classes, and shall contain a statement of the rate or rates at which interest and penalties will be computed for the various liens it includes.

b. Every such list shall set forth the parcels it includes separately and number them serially. For each parcel it shall contain (1) a brief description sufficient to identify the parcel, including section, block and lot numbers, and the street and street number, if any, or in the absence of such information the parcel or tract identification number shown on a tax map or on a map filed in the county clerk's or register's office and (2) a statement of the amounts and dates of all unpaid tax liens which are subject to foreclosure under this chapter and of those which have accrued thereafter.

c. (1) The commissioner of finance may exclude or thereafter remove from such list any parcels (i) as to which questions the commissioner deems meritorious have been raised regarding the validity of the liens, (ii) as to which all the taxes and other charges which rendered said parcels eligible for inclusion in said list have been paid, or (iii) which are owned by an entity other than a company organized pursuant to article eleven of the private housing finance law with the consent and approval of the department of housing preservation and development and which are not owner-occupied residential buildings of not more than five residential units and as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, interest and penalties in installments. The first installment shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount of not less than fifteen percent of such delinquent taxes, assessments or other legal charges, interest and penalties. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first day

of July, October, January and April. For the purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis.

(2) The commissioner of finance may also exclude or thereafter remove from such list any parcels which are owned by a company organized pursuant to article eleven of the private housing finance law with the consent and approval of the department of housing preservation and development, and (i) as to which an agreement has been duly made, executed and filed with said commissioner for the payment of the delinquent taxes, assessments or other legal charges incurred prior to the ownership of said parcel by said article eleven company, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount of not less than ten percent of such delinquent taxes, assessments or other legal charges and the interest and penalty thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight in number shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis; and

(ii) as to which an agreement has been duly made, executed and filed with said commissioner, for the payment of the delinquent taxes, assessments or other legal charges incurred after the ownership of said parcel by said article eleven company on the same terms as are provided in paragraph one of this subdivision.

(3) The commissioner of finance may also exclude or thereafter remove from such list any parcels which are owner-occupied residential buildings of not more than five residential units as to which an agreement has been duly made, executed and filed with said commissioner for the payment of the delinquent taxes, assessments, or other legal charges and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount not less than ten percent of such delinquent taxes, assessment or other legal charges and the interest and penalty thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight in number, shall be payable quarterly on the first days of July, October, January and April. For purposes of calculating the number of such remaining installments unpaid real estate taxes which are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis.

(4) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel that is (i) (A) a residential building containing not more than five residential units, (B) a residential condominium unit, (C) a residential building held in a cooperative form of ownership, or (D) owned by a company organized pursuant to article eleven of the state private housing finance law with the consent and approval of the department of

housing preservation and development, and (ii) as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than ten percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(5) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel of class one or class two real property, other than a parcel described in paragraph four of this subdivision, as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than fifteen percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(6) Notwithstanding paragraph one, two or three of this subdivision, with respect to installment agreements duly made, executed and filed on or after the date on which this paragraph takes effect, the commissioner of finance may also exclude or thereafter remove from such list any parcel of class three or class four real property as to which an agreement has been duly made, executed and filed with such commissioner for the payment of the delinquent taxes, assessments or other legal charges, and the interest and penalties thereon, in installments. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner and shall be in an amount equal to not less than fifteen percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(7) A parcel for which any such installment agreement or agreements have been filed with the commissioner shall be excluded or removed from

the list of delinquent taxes before the commencement of the in rem action based upon such list only if the amounts paid pursuant to such agreement exceed the amount required to pay all taxes and charges which render said parcel eligible for inclusion in the in rem action and there has been no default in such agreement prior to the commencement of said action as to either quarterly installments or current taxes, assessments or other legal charges.

(8) As a condition to entering into any agreement under this section or section 11-409 of this chapter, the commissioner shall have received from the applicant, an affidavit stating that each tenant located on the parcel has been notified by certified mail that an application for an installment agreement will be made and that a copy of a standard agreement form has been included with such notification. Any false statement in such affidavit shall not be grounds to cancel the agreement or affect its validity in any way.

d. Two duplicate originals thereof, verified by the commissioner of finance or a subordinate designated by the commissioner, shall be filed in the office of the clerk of the county in which the parcels listed therein are situated. Such filing shall constitute and have the same force and effect as the filing and recording in such office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city as to each parcel described in said list, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such parcels.

e. Each county clerk with whom such a list of delinquent taxes is filed shall, on the date of said filing, place and thereafter maintain one duplicate original copy thereof, as separately and permanently bound by the commissioner of finance, adjacent to and together with the block index of notices of pendency of action and each county clerk shall, on the date of said filing or as soon thereafter as with due diligence is practicable, docket the parcels contained in the list of delinquent taxes in said block index of notices of pendency of action, which shall constitute due filing, recording and indexing of the separate notices constituting said list of delinquent taxes in lieu of any other requirement under rule sixty-five hundred eleven of the civil practice law and rules or otherwise.

f. The commissioner of finance shall file a copy of each list of delinquent taxes, certified as such copy by him or her or a subordinate designated by the commissioner, in the office of the corporation counsel.

g. The validity of any proceeding hereunder shall not be affected by any omission or error of the commissioner of finance in including or excluding parcels from any such list or in the designation of a street or street number or by any other similar omission or error.

§ 11-406 Public notice of foreclosure. a. Upon the filing of a list of delinquent taxes in the office of the county clerk, the commissioner of finance forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and, subject to section ninety-one of the judiciary law, in two newspapers, one of which may be a law journal, to be designated by the commissioner of finance, which are published in and are circulated throughout the county in which the affected property is located. If there are no newspapers published in such county, the commissioner of finance may designate newspapers published in the city of Staten Island which are circulated throughout the affected county.

b. Such notice shall clearly indicate that it is a notice of foreclosure of tax liens; the section of a tax map or portion of a section of a tax map in which the properties subject to foreclosure are located and where the area affected by the action includes less than all parcels in a section of a tax map or portion of a section of a tax map, the particular class or classes contained therein, and by a general description which need not contain measurements and direction; where and when the list of delinquent taxes was filed; the general nature of the information contained in the list; that the filing of the list constitutes commencement of a foreclosure action by the city in the supreme court for the particular county and a notice of pendency of action against each parcel listed; that such action is against the property only and no personal judgment will be entered; that the list will be available for inspection at the city collector's central office and at the borough office of the city collector in which said property is located until a specified date at least ten weeks after the date of first publication; that until such date a parcel may be redeemed by paying all taxes and charges contained in said list of delinquent taxes together with interest and penalties thereon; that during said period of redemption and for an additional period of twenty days after said last date for redemption any person having any interest in or lien upon a parcel on the list may file with the appropriate county clerk and serve upon the corporation counsel a verified answer setting forth in detail the full name of said answering party, the nature and amount of his or her interest or lien and any legal defense against foreclosure; and that in the absence of redemption or answer a judgment of foreclosure may be taken by default.

c. On or before the date of the first publication of such notice, the commissioner of finance shall cause a copy of the notice to be mailed to all owners, mortgagees, lienors or encumbrancers, who may be entitled to receive such notice by virtue of any owner's registration or in rem card filed in the office of the city collector pursuant to section 11-416 or 11-417 of this chapter. If such owner's registration or in rem cards have not been filed in the office of the city collector then said notice shall be mailed to the name and address, if any, appearing in the latest annual record of assessed valuations. The commissioner of finance shall cause to be inserted with such notice a statement substantially in the following form:

"To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the attached notice. Unless the taxes and assessments and all other legal charges are paid, or an answer is interposed; or an arrangement is made for payment of such taxes and assessments and all other legal charges in installments, as provided by statute, the ownership of said property will in due course pass to the city of Staten Island as provided by the administrative code of the city of Staten Island."

The failure of the commissioner of finance to mail such notice shall not affect the validity of any proceeding brought pursuant to this chapter as to any parcel other than the parcel with respect to which notice was not mailed.

d. The commissioner of finance shall cause a copy of such notice to be posted in the office of the commissioner of finance, in the county courthouse of the county in which the property subject to such tax lien is situated and at three other conspicuous places in the city in which the affected properties are located.

§ 11-407 Redemption. a. After the filing of a list of delinquent taxes and until a date at least ten weeks after the first publication of the public notice of foreclosure, as determined by the commissioner of finance and specified in the said notice, a person claiming to have an interest in any parcel in said list may redeem it by paying all taxes and charges contained in said list of delinquent taxes together with interest and penalties thereon.

b. Upon such redemption the commissioner of finance shall deliver to the corporation counsel a certificate of redemption. The corporation counsel shall file such certificate with the clerk of the county in which said list was filed. The filing of such certificate shall constitute and be deemed a discontinuance of the in rem action as to the affected parcel, and the county clerk shall thereupon note such redemption and discontinuance in the copy of the list of delinquent taxes maintained by him or her adjacent to the county clerk's block index of notices of pendency of action and shall cancel and discharge any notations of the filing of said list of delinquent taxes as to said parcel that may appear in any other books, records, indices and dockets maintained in said clerk's office. The commissioner of finance shall also deliver a duplicate original certificate of redemption to the person who has redeemed.

c. When the time to redeem in an in rem tax foreclosure action has expired, any person claiming to have an interest in a parcel included in said action shall have the right to make a late redemption payment to the commissioner of finance. Such late redemption payment shall consist of all taxes and charges owing on said parcel, the lawful interest thereon to the date of payment and a penalty of five percent of said payment of taxes, charges and interest, which penalty may not exceed one thousand dollars as to each parcel on which a late redemption payment is being made. Such late redemption payment shall be made in cash or by certified or bank check and shall be accepted by the commissioner of finance at any time after the last day to redeem up to the date on which the commissioner is advised by the corporation counsel that the preparation of the judgment of foreclosure in the in rem action has been commenced. Upon receipt of such late redemption payment, the commissioner of finance shall issue a certificate of withdrawal pursuant to the provisions of section 11-413 of this chapter.

§ 11-408 Filing of affidavits. All affidavits of filing, publication, posting, mailing or other acts required by this chapter shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this chapter to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ 11-409 Severance and trial of issues where answer is interposed; installment agreements authorized after action commenced. a. If a duly verified answer is served upon the corporation counsel not later than twenty days after the last date for redemption, the answering defendant shall have the right to a severance of the action, as to any parcel in which the defendant has pleaded an interest, upon written demand therefor filed with or made a part of his or her answer.

b. When such answer is interposed, the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner as it hears and determines other actions, except as herein otherwise provided. Proof that the taxes which made said property subject to

foreclosure hereunder together with interest and penalties thereon, were paid before filing of the list of delinquent taxes or that the property was not subject to tax shall constitute a complete defense.

c. No counterclaim may be asserted in an answer interposed in an action brought pursuant to this chapter. Where a counterclaim is asserted in an in rem answer the city may disregard that portion of the answer and shall suffer no legal penalty or impediment in the prosecution of its in rem action for its failure to reply or respond thereto. Where an answer contains only a counterclaim and no other defenses the city may proceed to judgment of foreclosure against the property affected without the need for moving against the answer.

d. When a verified answer alleges a substantial equity over the city's lien for taxes, the defendant may demand additional time in which to pay the taxes and interest or to have the property sold with all taxes and interest to be paid out of the proceeds of such sale. Upon such demand a defendant shall have the right to an extension of time for such purpose not in excess of six months from the last day to interpose an answer. Where a mortgagee or lienor who has interposed such answer commences a proceeding to foreclose his or her mortgage or lien and it appears that with due diligence such proceeding cannot be concluded in time to allow the payment of taxes within the aforesaid six month period, the court may, on application before the end of said six month period, authorize an additional period during which such proceeding may be concluded and the taxes, together with interest and penalties, paid.

e. Where an answer of the type described in subdivision d of this section is interposed and taxes are paid within the period set forth in such subdivision, the commissioner of finance shall issue a certificate of withdrawal as to the property on which such payment has been made pursuant to the provisions of section 11-413 of this chapter. When taxes are not paid within the period set forth in subdivision d of this section, it shall be deemed that there was no equity over the city's tax liens and the answer shall be deemed to be without merit. The city in that event may proceed to judgment of foreclosure against such property without moving against the answer.

f. All answers interposed in an action hereunder and all affidavits and other papers pertaining to any litigation involving such answers or to any proceeding brought pursuant to this chapter involving less than an entire action shall bear a caption containing the in rem action number of the city's tax foreclosure proceeding, the section of a tax map or portion of a section of a tax map affected, and if the action covers less than all parcels in the section of a tax map or portion of a section of a tax map, the particular class or classes, and the serial, section, block and lot numbers of the parcel or parcels in issue.

g. The corporation counsel, when submitting an in rem judgment roll pursuant to the provisions of this chapter, may request a severance as to any parcel on which an in rem answer or litigation is pending, or as to which, before the preparation of said in rem judgment roll is commenced, an agreement was duly made, executed and filed with the commissioner of finance for the payment of the delinquent taxes, assessments or other legal charges and interest and penalties in installments as provided in subdivision c of section 11-405 of this chapter and there has been no default in such agreement as to either quarterly installments or current taxes, assessments or other legal charges. Where such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time the aforesaid

agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Where a default occurs in such agreement as to either quarterly installments or current taxes, assessments or other legal charges, all payments made under the agreement shall be forfeited and the city shall be entitled to acquire the parcel as to which the default occurred. Where such default occurs before the submission of the judgment roll, the parcels as to which such default occurs shall be included in said judgment roll among the parcels to be acquired by the city. Where such default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full the commissioner of finance shall discontinue the in rem action from which said parcel was severed by issuing a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter.

h. A party who has interposed an answer as to any parcel included in an in rem tax foreclosure action, or any other party interested in such parcel, shall have the right, at any time prior to the final disposition of a motion to strike said answer, to pay all taxes, assessments and other legal charges and interest owing on said parcel. An answering party who makes such payment shall not be required to pay any penalty. Where such payment is made by other than an answering party after the expiration of the period of redemption, there shall be paid to the commissioner of finance an additional amount equal to the penalty payable under subdivision c of section 11-407 of this chapter. Where all delinquent taxes, assessments and other legal charges together with lawful interest thereon and penalties, where required, are paid, the commissioner of finance shall issue a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter. Said parties may also pay such taxes, assessments and other legal charges and interest by an installment agreement. Where such agreement is requested before the preparation of the aforesaid in rem judgment roll is commenced, the terms of said agreement shall be consistent with the provisions of subdivision g or i of this section, whichever is applicable. Where such agreement is requested after judgment of foreclosure has been entered in the in rem action in which the aforesaid answer was interposed, said agreement shall require a first installment of fifty percent of all taxes, assessments and other legal charges and interest owing on said parcel, a penalty of five percent of all such taxes, assessments and other legal charges and interest, which penalty may not exceed one thousand dollars, and the payment of the balance of such taxes, assessments and other legal charges and interest in four equal quarterly installments together with all current taxes, assessments and other legal charges that accrue during such period. The request of an answering party for an installment agreement shall constitute a withdrawal of such party's answer. An installment agreement requested by an interested party other than the answering party shall require the consent of said answering party which shall also constitute a withdrawal of such party's answer. The severance provided for in this section shall be continued during the term of all installment agreements entered into pursuant to the provisions of this subdivision. Where a

default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full, the commissioner of finance shall discontinue the in rem action from which said parcel was severed by issuing a certificate of withdrawal as to said parcel pursuant to the provisions of section 11-413 of this chapter.

i. (1) Notwithstanding subdivision g of this section, this subdivision shall apply with respect to installment agreements made, executed and filed with the commissioner of finance on or after the date on which this subdivision takes effect. An installment agreement pursuant to this subdivision may be made, executed and filed with such commissioner during the period beginning on the date on which an action is commenced as provided in subdivision d of section 11-405 of this chapter with respect to the parcel that is the subject of such agreement and ending on the date on which such commissioner is advised by the corporation counsel that the preparation of the judgment of foreclosure in such in rem action has been commenced. Notwithstanding anything to the contrary, and except to the extent provided in paragraph two of this subdivision, the provisions of paragraphs one through six of subdivision c of section 11-405 of this chapter shall not apply to any installment agreement requested on or after the date on which this subdivision takes effect and on or after the date on which an action is commenced as provided in subdivision d of such section 11-405 with respect to the parcel that is the subject of such requested agreement.

(2) An agreement entered into pursuant to this subdivision shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. Unless an eligible owner or other interested person requests an agreement pursuant to the provisions of paragraph three of this subdivision, the terms of such agreement with respect to a parcel shall be the same as the terms that would be applicable to such parcel under paragraph four, five or six, as the case may be, of subdivision c of section 11-405 of this chapter, except that, for purposes of the agreement pursuant to this paragraph, the amount of the first installment shall be equal to: (i) fifteen percent of the total amount due in the case of a parcel described in paragraph four of subdivision c of section 11-405 of this chapter; (ii) twenty percent of the total amount due in the case of a parcel described in paragraph five of subdivision c of section 11-405 of this chapter; and (iii) twenty-five percent of the total amount due in the case of a parcel described in paragraph six of subdivision c of section 11-405 of this chapter.

(3) Instead of an agreement pursuant to paragraph two of this subdivision, an eligible owner or other interested party may request an agreement pursuant to the following provisions:

(i) With respect to a parcel that is owned by a company organized pursuant to article eleven of the state private housing finance law with the consent and approval of the department of housing preservation and development, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the

applicant's election, either thirty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed thirty-two in number, shall be payable quarterly on the first days of July, October, January and April, together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(ii) With respect to a parcel, other than a parcel described in subparagraph (i) of this paragraph, that is a residential building containing not more than five residential units, a residential condominium unit or a residential building held in a cooperative form of ownership, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the applicant's election, either twenty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be three times the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(iii) With respect to any parcel of class one or class two real property, other than a parcel described in subparagraph (i) or (ii) of this paragraph, such agreement shall provide for the payment in installments of the delinquent taxes, assessments and other legal charges, and the interest and penalties thereon, due and owing as of the date on which such agreement is requested. The first installment thereof shall be paid upon the filing of the installment agreement with the commissioner of finance and shall be in an amount at least equal to, at the applicant's election, either thirty-five percent or fifty percent of the total amount of such delinquent taxes, assessments or other legal charges and the interest and penalties thereon. The remaining installments, which shall be twice the number of unpaid quarters of real estate taxes or the equivalent thereof, but which shall in no event exceed twenty in number, shall be payable quarterly on the first days of July, October, January and April, together with interest at the rate or rates determined as provided in subparagraph (iv) of this paragraph. For the purposes of calculating the number of such remaining installments, unpaid real estate taxes that are due and payable on other than a quarterly basis shall be deemed to be payable on a quarterly basis.

(iv) (A) Notwithstanding any higher rate of interest prescribed pursuant to applicable law, and unless a lower rate of interest is applicable to a delinquent amount owing on a parcel that is the subject of an agreement pursuant to this paragraph, the interest payable together with the remaining installments due under such agreement shall be:

(I) with respect to an agreement for which a twenty-five percent or thirty-five percent down payment was made, calculated at a rate equal to the sum of (a) the rate prescribed for the applicable period pursuant to paragraph (i) of subdivision e of section 11-224.1 of this title and (b) one-half of the difference between such rate and the rate prescribed for such period pursuant to paragraph (ii) of subdivision e of section 11-224.1 of this title; or

(II) with respect to an agreement for which a fifty percent down payment was made, calculated at a rate equal to the rate prescribed for the applicable period pursuant to paragraph (i) of subdivision e of section 11-224.1 of this title.

(B) If a default occurs in any agreement executed pursuant to this paragraph as to either quarterly installments or current taxes, assessments or other legal charges, the rates of interest determined under this subparagraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise prescribed pursuant to law.

(4) The corporation counsel, when submitting an in rem judgment roll pursuant to the provisions of this chapter, may request a severance as to any parcel as to which, before the preparation of said in rem judgment roll is commenced, an agreement was duly made, executed and filed with the commissioner of finance for the payment of all delinquent taxes, assessments and other legal charges and interest and penalties in installments as provided in this subdivision, and there has been no default in such agreement as to either quarterly installments or current taxes, assessments or other legal charges. Where such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time such agreements are executed an amount equal to the penalty that would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Where a default occurs in such agreement as to either quarterly installments or current taxes, assessments or other legal charges, all payments made under the agreement shall be forfeited and the city shall be entitled to obtain a judgment hereunder as to the parcel as to which the default occurred. Where such default occurred before the submission of the judgment roll, the parcels as to which such default occurs shall be included in said judgment roll amount the parcels to be acquired by the city or by a third party. Where such default has occurred as to a parcel severed pursuant to this subdivision, the corporation counsel shall cause to be entered a supplemental judgment of foreclosure as to such parcel immediately on notification by the commissioner of finance of such default. Where such installment agreement is paid in full, the commissioner of finance shall discontinue the in rem action from which such parcel was severed by issuing a certificate of withdrawal as to such parcel pursuant to the provisions of section 11-413 of this chapter.

§ 11-410 Preference over other actions. a. Any action brought pursuant to this chapter shall be given preference over all other causes and actions.

b. Actions brought pursuant to this chapter shall take precedence over any proceeding brought to foreclose a mortgage or other lien involving the same property. A parcel included in a list of delinquent taxes which is sold in a mortgage foreclosure sale held after said list is

filed may not be sold subject to taxes even if judgment has not yet been entered in the tax foreclosure action. All unpaid taxes and interest and penalties thereon must be paid, in full or by installment agreement pursuant to the provisions of this chapter, out of the proceeds of such sale regardless of whether the mortgage foreclosure lis pendens was filed before or after the filing of the tax foreclosure action, regardless of whether any party to the mortgage foreclosure proceeding has interposed an answer in the tax foreclosure action and regardless of any terms to the contrary in the judgment in the mortgage foreclosure proceeding.

§ 11-411 Presumption of validity. It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the parcels set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in such taxes, assessments or other lawful charges or in the foreclosure thereof must particularly specify in his or her answer such jurisdictional defect or invalidity and must affirmatively establish such defense. A judgment of foreclosure granted in any proceeding brought pursuant to this chapter, which contains recitals that any acts were done or proceedings had which were necessary to give the court jurisdiction or power to grant such judgment of foreclosure, shall be presumptive evidence that such acts were duly performed or proceedings duly had, if such judgment of foreclosure shall have been duly entered or filed in the office of the clerk of the county in which the proceeding was pending and wherein such judgment was granted. The provisions of this chapter shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ 11-412 Final judgment. a. The court shall determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this chapter.

b. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed or withdrawn as provided in this chapter and as to which no answer is interposed as provided herein. In addition thereto, such judgment shall contain a direction to the commissioner of finance to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption, except as otherwise provided in section 11-424 of this chapter. The appointment and tenure of receivers, trustees or any other persons, including administrators under article seven-A of the real property actions and proceedings law, appointed by an order of a court to manage real property, shall terminate when title to such property vests in the city pursuant to the provisions of this chapter. After such termination, said receivers, trustees or administrators shall be accountable to the courts that appointed them for the faithful performance of their fiduciary obligations during the term of their appointment and to the city for any rents and income received by

them for any period subsequent to the date of the vesting of title in the city.

If the city serves a tenant in possession of a dwelling unit with notice of termination of tenancy on grounds other than non-payment of rent, the acceptance of rent for the first forty-five days after termination of tenancy by anyone other than an employee of the department designated by the department to receive such rent shall not be deemed or construed as a waiver of the city's right to initiate and prosecute a proceeding to terminate the tenancy for good cause.

c. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After two years from the date of the recording of such deed, the presumption shall be conclusive, unless at the time that this subdivision takes effect the two year period since the recording of the deed has expired or less than six months of such period of two years remains unexpired, in which case the presumption shall become conclusive six months after this subdivision takes effect. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid.

§ 11-412.1 Special procedures relating to final judgment and release of class one and class two real property. Notwithstanding any other provision of law to the contrary:

a. The court shall determine upon proof and shall make a finding upon such proof whether there has been due compliance by the city with the applicable provisions of this chapter.

b. (1) The court shall make a final judgment authorizing the award of possession of any parcel of class one or class two real property described in the list of delinquent taxes not redeemed or withdrawn as provided in this chapter and as to which no answer is interposed as provided herein, and authorizing the commissioner of finance to prepare, execute and cause to be recorded a deed conveying either to the city or to a third party deemed qualified and designated by the commissioner of housing preservation and development full and complete title to such lands. Any such conveyance to a third party shall be for an existing use.

(2) Such third party shall be deemed qualified and shall be designated pursuant to such criteria as are established in rules promulgated by the commissioner of housing preservation and development, provided, however, that such criteria shall include but not be limited to: residential management experience; financial ability; rehabilitation experience; ability to work with government and community organizations; neighborhood ties; and that the commissioner shall consider whether the third party is a responsible legal tenant, not-for-profit organization or neighborhood-based-for-profit individual or organization. The commissioner shall not deem qualified any third party who has been finally adjudicated by a court of competent jurisdiction, within seven years of the date on which such third party would otherwise be deemed qualified, to have violated any section of article one hundred fifty, one hundred seventy-five, one hundred seventy-six, one hundred eighty, one hundred eighty-five or two hundred of the penal law or any similar laws of another jurisdiction, or who has been suspended or debarred from contracting with the city or any agency of the city pursuant to section

335 of the charter during the period of such suspension or debarment. The rules promulgated by the commissioner pursuant to this paragraph may establish other bases for disqualification of a third party.

c. Following the expiration of the four-month period prescribed in subdivision d of this section, but not more than eight months after the date on which, pursuant to subdivision b of this section, the final judgment authorizing the award of possession of a parcel of class one or class two real property was entered, the commissioner of finance may execute a deed, pursuant to subdivision b of this section, with respect to such parcel. The owner of said parcel shall continue to have all of the rights, liabilities, responsibilities, duties and obligations of an owner of such parcel, including, but not limited to, maintaining such parcel in compliance with the housing maintenance, building and fire codes, and all other applicable laws, unless and until the commissioner of finance has prepared and executed a deed conveying to the city or to a third party full and complete title to such parcel. Upon the execution of such deed, the city or the third party shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption, except as otherwise provided in subdivisions e and f of this section. The appointment and tenure of receivers, trustees or any other persons, including administrators under article seven-A of the real property actions and proceedings law, appointed by an order of a court to manage real property, shall terminate when title to such property vests in the city or a third party pursuant to the provisions of this chapter. After such termination, said receivers, trustees or administrators shall be accountable to the courts that appointed them for the faithful performance of their fiduciary obligations during the term of their appointment and to the city or such third party for any rents and income received by them for any period subsequent to the date of the vesting of title in the city or such third party.

If the city serves a tenant in possession of a dwelling unit with notice of termination of tenancy on grounds other than nonpayment of rent, the acceptance of rent for the first forty-five days after termination of tenancy by anyone other than an employee of the department designated by the department to receive such rent shall not be deemed or construed as a waiver of the city's right to initiate and prosecute a proceeding to terminate the tenancy for good cause.

d. Within four months after the date on which, pursuant to subdivision b of this section, the final judgment authorizing the award of possession of a parcel of class one or class two real property was entered, any person claiming to have an interest in such parcel shall have the right to make a payment to the commissioner of finance consisting of all taxes, assessments and other legal charges owing on said parcel, the lawful interest thereon to the date of payment and a penalty of five percent of said payment of taxes, assessments and other legal charges and interest, which penalty may not exceed one thousand dollars. Such payment shall be made in cash or by certified or bank check. Within such four-month period, such interested person may also request an installment agreement from the commissioner of finance. Such agreement shall require, in addition to full payment of the penalty specified in this subdivision at the time such agreement is entered into, the payment at such time of a first installment equal to fifty percent of all taxes,

assessments and other legal charges, and the lawful interest thereon, then owing on such parcel, and the payment of the balance of such taxes, assessments and other legal charges and interest in four equal quarterly installments together with all current taxes, assessments and other legal charges that accrue during such period. Upon receipt of payment in full of the amount specified in this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem tax foreclosure action as to said property, cancelling the notice of pendency of such action as to said property and vacating and setting aside the final judgment. Upon the execution of an installment agreement and payment of the amounts due at the time such agreement is executed as provided in this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order vacating and setting aside the final judgment. The entry of either such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered. Where the commissioner of finance approves an application requesting an installment agreement pursuant to this subdivision, the order vacating and setting aside the final judgment shall provide that in the event of any default as to the payment of either quarterly installments or current taxes, assessments or other legal charges during the term of such agreement, all payments under said agreement shall be forfeited and the corporation counsel, immediately upon notification by the commissioner of finance of such default, shall cause to be entered as to such property a supplemental judgment of foreclosure in the in rem action which authorizes the commissioner of finance to prepare, execute and cause to be recorded a deed conveying either to the city or to a third party full and complete title to such lands. Upon the entry of such supplemental judgment, the provisions of subdivisions c through i of this section shall apply in the same manner as such subdivisions would have applied had no payment been made nor installment agreement executed during the four-month period specified in this subdivision.

e. 1. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the city's interest in such parcel may be released pursuant to this subdivision on the application of any party who has an interest in said parcel as either owner, mortgagee, lienor, or encumbrancer at the time of the city's acquisition thereof where such application is made at any time up to sixteen months from the date on which the deed by which the city acquired title to said parcel was recorded.

2. Any such application shall be made in writing to the commissioner of general services and shall be verified. It shall contain the information required pursuant to paragraph one of subdivision b of section 11-424 of this chapter, the documents required by subdivision c of such section, and shall be accompanied by the fees required by paragraphs three and six of subdivision b of such section. The fee required by paragraph three of subdivision b of section 11-424 of this chapter shall not be refundable.

3. The city's interest in any such parcel shall be released only after payment of the sums of money specified in subdivision d of section 11-424 of this chapter.

4. The provisions contained in subdivision g of section 11-424 of this chapter shall govern such an application, except as follows:

(a) where such provisions are inconsistent with the provisions contained in this subdivision, the provisions contained in this subdivision shall govern such application; and

(b) where the in rem foreclosure release board denies a written request for an installment agreement that was filed in connection with an application for release of the city's interest in a parcel of class one or class two real property and such application was filed within thirty days of the date of the city's acquisition of the property sought to be released, the board may, in its discretion, authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid pursuant to subdivision d of section 11-424 of this chapter within thirty days of the date on which a letter requesting such payment is mailed or delivered to such applicant.

5. Upon receipt of all the amounts required to be paid pursuant to this subdivision, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem tax foreclosure action as to said property, cancelling the notice of pendency of such action as to said property and vacating and setting aside the final judgment entered pursuant to subdivision b of this section and the deed executed and recorded pursuant to such final judgment as to said property. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before the final judgment was entered, as if the in rem tax foreclosure had never taken place, and shall render said property liable for all taxes, deficiencies, management fees and liens which shall accrue subsequent to those paid in order to obtain the release provided for in this subdivision, or which were, for whatever reason, omitted from the payment made to obtain said release.

f. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure and such parcel is entitled to an exemption under any of the provisions of article four of the real property tax law during all or part of the period covered by the tax items appearing on a list of delinquent taxes, the owner of such parcel may apply for a release of the city's interest in such exempt property under the provisions of subdivision e of this section during the period of time set forth in paragraph one of such subdivision and for an additional period up to ten years from the date on which the deed by which the city acquired title to said property was recorded. The application of such owner shall be accompanied by the nonrefundable fee required by paragraph four of subdivision b of section 11-424 of this chapter and shall contain, in addition to the statements, searches and proofs required by subdivision e of this section, a statement that an exemption under the real property tax law is being claimed. Such application shall also state either that it is accompanied by the written certificate of the comptroller setting forth the precise period during which said property, while owned by such application, and during the period after the city's acquisition up to the date of the certificate if said property was still being used for an exempt purpose after said acquisition, was entitled to an exemption and the exact nature and extent of such exemption or that an application for such written certificate has been filed with the comptroller. On issuing such written certificate, the comptroller shall cancel those tax items which have accrued during the period covered by the certificate to the extent the applicant is entitled to an exemption as set forth in the

certificate. A release of the city's interest may be authorized only at the discretion of the in rem foreclosure release board and, except as otherwise provided in paragraph four of subdivision e of this section, subject to all the restrictions set forth in subdivision g of section 11-424 of this chapter. A release to an exempt applicant shall be effected only after said applicant has paid all of the amounts required to be paid by subdivision d of section 11-424 of this chapter, except for those tax items which have been canceled, in whole or in part, pursuant to the comptroller's certificate, within thirty days of the date on which the letter requesting payment is mailed or delivered to the applicant.

g. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to the city or to a third party full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the provisions contained in subdivisions f and i of section 11-424 of this chapter for the release of property so acquired shall not be available. If the commissioner of finance has prepared, executed and caused to be recorded a deed conveying to a third party full and complete title to a parcel of class one or class two real property acquired by in rem tax foreclosure, the provisions contained in subdivisions e and f of this section for the release of property so acquired shall not be available.

h. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After four months from the date of entry of the final judgment authorizing the award of possession of any parcel of class one or class two real property pursuant to the provisions of this section, the presumption shall be conclusive. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the property county clerk prior to the time that the presumption becomes conclusive as aforesaid. Should any lawsuit or proceeding be commenced to set aside a deed conveying to a third party a parcel of class one or class two real property pursuant to the provisions of this section, such third party shall send to the corporation counsel within ten days of their receipt a copy of any papers served on such third party in such lawsuit or proceeding.

i. If the commissioner of finance does not execute a deed conveying to the city or to a third party a parcel of class one or class two real property within eight months after the entry of final judgment authorizing the award of possession of such parcel pursuant to subdivision b of this section, the commissioner of finance shall direct the corporation counsel to prepare and cause to be entered an order discontinuing the in rem foreclosure action as to said property, canceling the notice of pendency of such action as to said property and vacating and setting aside said final judgment. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held immediately before such final judgment was entered.

j. If the commissioner of finance directs the corporation counsel, pursuant to subdivision i of this section, to prepare and cause to be entered an order discontinuing the in rem foreclosure action with respect to a parcel of class one or class two real property determined to be distressed pursuant to section 11-401.1 of this chapter, the

commissioner of housing preservation and development shall evaluate the parcel determined to be distressed and take such action as he or she deems appropriate under the programs, existing at the time of such evaluation, that are designed to encourage the rehabilitation and preservation of existing housing, and shall monitor or cause to be monitored the status of the property. The commissioner of housing preservation and development shall maintain a register of properties determined to be distressed.

§ 11-412.2 Council review of conveyance to a third party. The commissioner of finance shall, prior to the execution of a deed conveying full and complete title of any parcel of class one or class two real property to a third party pursuant to subdivision c of section 11-412.1 of this chapter, notify the council of the proposed conveyance. Within forty-five days of such notification, the council may act by local law disapproving the proposed conveyance. In the event the council does not act by local law within such forty-five day period, the council shall be deemed to have approved the proposed conveyance. During such forty-five day period or, if the city council acts by local law pursuant to this section, during the period of time from the notification of the council to the presentation to the mayor of such local law and during any additional period of time prescribed in section 37 of the charter, the eight-month period provided in subdivisions c and i of section 11-412.1 of this chapter shall be tolled.

§ 11-413 Withdrawal of parcels from foreclosure. a. The commissioner of finance may, prior to final judgment, withdraw a parcel from a proceeding under this chapter for any of the following reasons, (1) a question which the commissioner deems meritorious has been raised as to the validity of the tax liens affecting the parcel, (2) the city collector has accepted a payment of all taxes and interest which rendered the parcel subject to foreclosure hereunder because the records in the commissioner's office indicated that the principal amount of such taxes was exceeded by the principal amount of subsequent taxes which would not have rendered the parcel subject to foreclosure hereunder and which had been paid prior to the commencement of said proceeding or (3) in cases where the tax foreclosure action cannot be maintained such as, but not limited thereto, where the charges which rendered a parcel subject to foreclosure hereunder have been cancelled or were paid before the commencement of the foreclosure proceeding but such payment was not reported or did not clear for payment until after the commencement of said proceeding, or where a name and address appearing on an owner's registration card or an in rem card filed pursuant to section 11-416 or 11-417 of this chapter and contained in the files of the city collector did not appear in the mailing list used by the commissioner of finance for mailing notices of foreclosure in such proceeding.

b. To effectuate such withdrawal the commissioner of finance shall deliver a certificate of withdrawal to the corporation counsel who shall file it in the office of the county clerk in which the list of delinquent taxes was filed. The filing of such certificate with such county clerk shall effect a discontinuance of the tax foreclosure action as to the affected parcel, and the county clerk shall thereupon note such withdrawal and discontinuance in the copy of the list of delinquent taxes maintained by him or her adjacent to the county clerk's block index of notices of pendency of action and shall cancel and discharge any and all notations of the filing of said list of delinquent taxes as to said parcel that may appear in any other books, records, indices and dockets maintained in said clerk's office.

c. The commissioner of finance shall also deliver a duplicate original certificate of withdrawal to the person entitled to such withdrawal.

d. The commissioner of finance shall recite the parcels so withdrawn and the reasons for withdrawal in an affidavit of regularity to be submitted by the commissioner in each action brought pursuant to this chapter.

e. The commissioner of finance shall issue a certificate of withdrawal whenever taxes and interest are paid, cancelled, liquidated or otherwise lawfully disposed of as to any parcel which was previously severed pursuant to section 11-409 of this chapter because an answer or litigation was pending.

§ 11-414 Right of redemption not diminished. The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this chapter.

§ 11-415 Priority of liens. Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

§ 11-416 Owner's registration cards; mailing tax bills and notices to registered owners or their designees. a. The commissioner of finance shall maintain a file of owner's registration cards submitted by owners of real property. Each such owner's registration card shall be signed by the owner or a duly authorized representative and shall state the date on which it was filed, the owner's full name and post office address and a description of the premises by reference to the section, block, and lot numbers on the tax map.

b. The commissioner of finance shall mail bills for taxes, charges and assessments to all owners who have filed owner's registration cards as herein provided, but the failure of the commissioner of finance so to mail such bill shall not invalidate or otherwise affect the tax, charge or assessment represented thereby nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this chapter, nor effect the title of the plaintiff or any purchaser under such proceedings.

c. The commissioner of finance shall also mail notice of foreclosure and any other process required by this chapter to all owners who have filed owner's registration cards whenever the parcels as to which such cards were filed are included in a list of delinquent taxes filed pursuant to this chapter. The failure to receive such notice or process as herein provided shall not affect the validity of any action or proceeding brought pursuant to this chapter.

d. An owner who files an owner's registration card may also designate thereon the full name and post office address of a mortgagee, lienor or other person to receive bills and notices. Where such designation is made, the commissioner of finance shall not mail any bills and notices to the owner but shall mail all bills and notices to the owner's designee.

§ 11-417 In rem cards; mailing notices to other interested persons. a. The commissioner of finance shall, in addition to the file maintained by him or her pursuant to section 11-416 of this chapter, maintain a file of in rem cards submitted by any person having an interest in real property who is not entitled to have tax bills mailed to him or her by the commissioner of finance, including mortgagees, lienors, encumbrancers and owners who have filed owner's registration cards designating someone else to receive bills and notices. Each such in rem card shall be signed by the person filing such card or a duly authorized represen-

tative, shall contain a description of the premises by reference to the section, block and lot numbers on the tax map and shall state the date on which said card was filed, the full name and post office address of the person filing said card and the nature of the interest said person has in said premises.

b. The commissioner of finance shall mail a notice of foreclosure and any other process required by this chapter to each person who has filed an in rem card whenever the parcels to which such cards refer are included in a list of delinquent taxes filed pursuant to this chapter. However, failure to receive such notice or process shall not affect the validity of any proceeding brought pursuant to this chapter.

§ 11-418 Writ of assistance. The city, after acquiring title to premises under and pursuant to the terms and provisions of this chapter, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

§ 11-419 Consolidation of actions. Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being foreclosed by action under this chapter, shall be terminated upon the institution of a foreclosure action pursuant to this chapter, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

§ 11-420 Lands held for public use; right of sale. Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this chapter, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

§ 11-421 Certificate of sale as evidence. The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this chapter by and against the purchaser and his or her representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the nonpayment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this chapter to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.

§ 11-422 Deed in lieu of foreclosure. The city may when authorized by resolution of the successor agency, officer or employee of the former board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this chapter accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

§ 11-423 Sales and foreclosures of tax liens. Notwithstanding any of the provisions of this chapter the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this title.

§ 11-424 Application to the city for release of property acquired by in rem tax foreclosure. a. (1) The city's interest in property acquired by in rem tax foreclosure may be released pursuant to this section on the application of any party who had an interest in said property as either owner, mortgagee, lienor or encumbrancer at the time of the city's acquisition thereof where such application is made at any time up to two years from the date on which the deed by which the city acquired title to said property was recorded.

(2) Notwithstanding any inconsistent provision of paragraph one of this subdivision to the contrary, the city's interest in property acquired by in rem tax foreclosure may be released pursuant to this section upon application of any party who had an interest in said property as either owner, mortgagee, lienor or encumbrancer at the time of the city's acquisition thereof where such application is made more than two years after the date on which the deed by which the city acquired title to said property was recorded provided such application is authorized by the council as hereinafter provided. An application for such release and the documents required by subdivision c of this section in support thereof shall be filed with the department of citywide administrative services in the manner provided in subdivision b of this section. The department of citywide administrative services shall give the council written notice of the receipt of each such filing. After review and approval of the application by the corporation counsel as to form and eligibility of the applicant, the department of citywide administrative services shall send a copy of such application to the in rem foreclosure release board and to the council. Upon receipt of such application, the in rem foreclosure release board shall take no further action on such application unless the council adopts a resolution within one hundred twenty days following the first stated meeting of the council after receipt of such application authorizing the board to consider such application. If the council fails to adopt a resolution within such one hundred twenty-day period, the council shall be deemed to have denied its authorization for the board to consider such application. A resolution of the council pursuant to this paragraph shall describe the property for which release is sought by borough, tax map, block and lot number and shall specify that release of the city's interest in such property is subject to the approval of the in rem foreclosure release board and to all the conditions and restrictions set forth in this section.

b. 1. Any such application shall be made in writing to the commissioner of citywide administrative services and shall be verified. It shall contain the name and address of the applicant and shall state the date on which and the in rem action by which the city acquired title to the property sought to be released. It shall also contain a statement specifying the nature of the applicant's interest in the property and a full description of the instrument from which the applicant's interest derives including the date of execution, the date and place of the recording or entry of said instrument and the parties thereto. In the event the applicant's interest arises by reason of the death of a prior owner, mortgagee, lienor or encumbrancer, then the application shall also state the applicant's relationship to said decedent and shall include whatever additional information may be necessary to prove the applicant's right to make such application.

2. A fee of two hundred seventy-five dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision f of this section, except that the fee for any such applica-

tion for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

3. A fee of five hundred fifty dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision g of this section, except that the fee for any such application for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

4. A fee of two hundred seventy-five dollars shall be paid on the submission of any such application which is subject to the provisions of subdivision h of this section within four months from the date on which the deed by which the city acquired title to the subject property was recorded, and a fee of five hundred and fifty dollars shall be paid on the submission of any such application which is subject to the provisions of such subdivision not within four months from such date; except that the fee for any such application which is subject to the provisions of such subdivision for the release of property improved by a one or two-family dwelling shall be one hundred dollars.

5. The fees payable pursuant to paragraphs two, three and four of this subdivision shall not be refundable.

6. In addition to the fees specified in paragraphs two, three and four of this subdivision, there shall be paid on the submission of any application which is subject to this section an amount at least equal to the lesser of nine hundred dollars or the sum specified in paragraph one of subdivision d of this section, which amount shall not be refundable, but shall be applied in reduction of the sum specified in paragraph one of subdivision d of this section; provided, however, that if a release requires the authorization of the in rem foreclosure release board, and such authorization is not given, such additional amount shall be refunded to the applicant.

c. Each application shall be supported by the certified search of the city register or by an official letter, certificate or certified search of any title insurance or abstract company, organized and doing business under the laws of this state. Such supporting instruments shall recite the recording data both as to the deed by which the city acquired title to the parcel sought to be released and the instrument from which the applicant's interest derives. In the event the applicant's interest does not appear of record but is derived by the death of an owner, mortgagee, lienor or encumbrancer of record, then the application shall also be supported by the affidavit of the applicant or other person having information thereof, or by the duly written certificate or certification of the county clerk or the clerk of any surrogate's or other court of record, or by any other instrument or document required by the corporation counsel to substantiate the applicant's right to file such application in compliance with the provisions of this section.

d. The city's interest shall be released only after payment, as to each parcel to be released, of the following sums of money:

1. The principal amount due on all unpaid taxes, assessments, water charges and sewer rents appearing on the list of delinquent taxes and accruing thereafter together with interest at the rate or rates provided by law.

2. Five percent of the amount paid pursuant to the preceding paragraph but not exceeding one thousand dollars for each parcel.

3. Any deficiency which may result to the city after all payments made by it for the repair, maintenance, and operation of the lands, real estate or real property shall have been charged or debited in the appropriate accounts of the city and all rents, license fees and other moneys

collected by the city as a result of its operation of the said lands, real estate or real property shall have been credited in such accounts. Any contract for repair, maintenance, management or operation made by the city on which it shall be liable, although payment thereon shall not have been made, shall be deemed a charge or debit to such accounts as though payment had been made. The amounts paid and collected by the city as shown in its accounts and the necessity for making the several payments and contracts to be charged as herein provided shall be conclusive upon the applicant. Where a deficiency under this subdivision shall be created or increased by the failure of the city to collect rents, license fees or other moneys to which the city may have been entitled, the right to collect or to bring action for the same shall be assigned, transferred and set over to the applicant by an instrument in writing.

4. Any and all costs and disbursements which shall have been awarded to the city or to which it may have become entitled by operation of law or which it may have paid or become liable for payment in connection with any litigation between it and the applicant or any person having an estate or interest in the lands, real estate or real property to be released resulting directly or indirectly from the foreclosure by action in rem of the delinquent taxes affecting said lands, real estate or real property.

5. A reasonable monthly fee to be determined by the city, through the department of citywide administrative services, for management services and operations of the lands, real estate or real property by the city prior to the release of said lands, real estate or property.

6. The city, through the department of citywide administrative services, shall also require as additional consideration for such release, the payment of all arrears on mortgages held by the city and all liens accruing to it by operation of law including but not limited to relocation and emergency repair liens.

e. The corporation counsel shall effect the release of the city's interest in property acquired by in rem tax foreclosure, as provided for in this section, by preparing and causing to be entered an order discontinuing the in rem tax foreclosure action as to said property, cancelling the notice of pendency of such action as to said property and vacating and setting aside the in rem judgment of foreclosure and the deed executed and recorded pursuant to such judgment of foreclosure as to said property. The entry of such order shall restore all parties, including owners, mortgagees and any and all lienors, receivers and administrators and encumbrancers, to the status they held at the time the city acquired title to said property, as if the in rem tax foreclosure had never taken place, and shall render said property liable for all taxes, deficiencies, management fees and liens which shall accrue subsequent to those paid in order to obtain the release provided for in this section, or which were, for whatever reason, omitted from the payment made to obtain said release.

f. If an application pursuant to this section, and the documents required by subdivision c of this section in support thereof, are filed within four months after the date of the city's acquisition of the subject property, said application shall be granted providing the corporation counsel approves the application as to form, timeliness and eligibility of the applicant and providing the applicant has paid all amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting applicant to make such payment is mailed or delivered to the applicant. The city shall not sell or assign any property acquired by in rem tax foreclosure within

four months of said acquisition but this provision shall not prevent the city from authorizing condemnation of such property or vesting title thereto in a condemnation proceeding during said four month period. In the event an application pursuant to this section is filed within four months of the city's acquisition by in rem tax foreclosure and title to the subject property vests in condemnation before the city's interest therein has been released by the vacate order provided for herein, the applicant shall be entitled to the condemnation award for such property without the entry of such vacate order, providing the corporation counsel has approved the application as aforesaid and providing that the amounts specified in subdivision d of this section, if not previously paid, are deducted from said condemnation award, with taxes apportioned to the date of the condemnation title vesting.

g. If an application for a release of the city's interest in property acquired by in rem tax foreclosure, and the documents required by subdivision c of this section in support thereof, have been filed within the time allowed in paragraph one of subdivision a of this section, but more than four months after the date of the city's acquisition or if an application for such release has been authorized by a resolution of the council pursuant to paragraph two of subdivision a of this section and such application and the documents required by subdivision c of this section in support thereof have been filed, the in rem foreclosure release board may, in its discretion, authorize the release of the city's interest in said property pursuant to this section, provided that the application has been approved by the corporation counsel as to form, timeliness and eligibility of the applicant and provided that the city has not sold or otherwise disposed of said property and provided, further, that said property has not been condemned or assigned to any agency of the city and is not the subject of contemplated use for any capital or urban renewal project of the city. The corporation counsel shall effect such discretionary release only where the applicant, after the board's authorization of the release, has paid all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting the applicant to make such payment is mailed or delivered to the applicant. The in rem foreclosure release board may also, in its discretion, authorize a release of the city's interest in such property, pursuant to the above provisions, whenever an application for such release, approved as to form, timeliness and eligibility by the corporation counsel, has been filed at any time during the period allowed in subdivision a of this section in which the applicant has requested an installment agreement of the commissioner of citywide administrative services for the payment of the amounts required to be paid by subdivision d of this section provided that said commissioner has approved such request. The commissioner of citywide administrative services shall not approve any such request unless the applicant shall have given notice by certified mail to each tenant located on the parcel, of the request and shall have given such commissioner an affidavit stating that such notice has been provided, within thirty days after the request. Any false statement in such affidavit shall not in any way affect the validity of the agreement, be grounds for its cancellation or in any way affect the release of the city's interest in the parcel. Such agreement shall require, in addition to full payment of the amounts due under paragraphs two, three, four, five and six of subdivision d of this section, a first installment of fifty percent of the amount due under paragraph one of said subdivision d with the balance of said amount to be paid in four equal quarterly install-

ments together with all current taxes, assessments or other legal charges that accrue during such period; provided, however, that: (i) whenever a request for an installment agreement is made of the commissioner of citywide administrative services by a company organized pursuant to article eleven of the private housing finance law with the consent and approval of the department of housing preservation and development or for a parcel which is an owner-occupied residential building of not more than five residential units, the commissioner of citywide administrative services may, as to that portion of the amounts due under paragraph one of subdivision d of this section which became due prior to the acquisition by the article eleven company of its interest in the property and as to the amount due under paragraph one of subdivision d of this section in the case of such an owner-occupied building, approve a reduction of such first installment to an amount not less than ten percent of the amount due under paragraph one of subdivision d of this section and an increase in the number of the following equal quarterly installments to a number which shall be equal to three times the number of unpaid quarters of real estate taxes or the equivalent thereof but which shall in no event exceed forty-eight, and (ii) notwithstanding clause (i) of this paragraph, whenever an installment agreement is requested on or after the date on which this clause takes effect with respect to a parcel that, immediately prior to the city's acquisition thereof by in rem tax foreclosure, was owned by a company organized pursuant to article eleven of the state private housing finance law with the consent and approval of the department of housing preservation and development, or with respect to a parcel that is a residential building containing not more than five residential units, a residential condominium unit or a residential building held in a cooperative form of ownership, the commissioner of general services may, as to the amount due under paragraph one of subdivision d of this section, approve an installment agreement containing the terms relating to the required percentage payment for the first installment and the required number of subsequent quarterly installments, that would be applicable to such parcel under paragraph two (but without regard to any reference therein to paragraph three) of subdivision i of section 11-409 of this chapter. For purposes of calculating the number of such following equal quarterly installments, unpaid real estate taxes or the equivalent which are, on and after July first, nineteen hundred eighty-two, due and payable on an other than quarterly basis shall be deemed to be payable on a quarterly basis. Where the in rem foreclosure release board denies an application requesting an installment agreement the board shall authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting such payment is mailed or delivered to the applicant only when said application and the documents required by subdivision c of this section in support thereof were filed within thirty days of the date of the city's acquisition of the property sought to be released. Where the in rem foreclosure release board denies an application requesting an installment agreement which was filed more than thirty days after the date of the city's acquisition, the board may, in its discretion, authorize a release of the city's interest, provided that the applicant thereafter pays all the amounts required to be paid by subdivision d of this section within thirty days of the date on which a letter requesting such payment is mailed or delivered to the applicant. Where the in rem foreclosure release board approves an application requesting an installment agree-

ment, the order releasing the city's interest shall provide that in the event of any default as to the payment of either quarterly installments or current taxes, assessments or other legal charges during the term of such agreement, as set forth in the board's resolution, all payments made under said agreement shall be forfeited and the city shall be entitled to reacquire the property so released. The corporation counsel shall effect such reacquisition by causing to be entered as to such property a supplemental judgment of foreclosure in the in rem action by which said property was originally acquired immediately on notification by the commissioner of finance of such default.

h. An owner of property entitled to an exemption under any of the provisions of article four of the real property tax law during all or part of the period covered by the tax items appearing on a list of delinquent taxes may apply for a release of the city's interest in such exempt property under the provisions of this section during the periods of time set forth herein and for an additional period up to ten years from the date of the city's acquisition of said property by in rem foreclosure. The application of such owner shall contain, in addition to the statements, searches and proofs required by this section, a statement that an exemption under the real property tax law is being claimed. Such application shall also state either that it is accompanied by the written certificate of the comptroller setting forth the precise period during which said property, while owned by such applicant, and during the period after the city's acquisition up to the date of the certificate if said property was still being used for an exempt purpose after said acquisition, was entitled to an exemption and the exact nature and extent of such exemption or that an application for such written certificate has been filed with the comptroller. On issuing such written certificate, the comptroller shall cancel those tax items which have accrued during the period covered by the certificate to the extent the applicant is entitled to an exemption as set forth in the certificate. Where an application by an exempt owner is filed more than four months after the date of the city's acquisition of the subject property, a release of the city's interest may be issued only at the discretion of the in rem foreclosure release board and subject to all the restrictions set forth in subdivision g of this section. A release to an exempt applicant shall be effected only after said applicant has paid all the amounts required to be paid by subdivision d of this section, except for those tax items which have been cancelled, in whole or in part, pursuant to the comptroller's certificate, within thirty days of the date on which a letter requesting payment is mailed or delivered to the applicant.

i. The corporation counsel shall also effect the release of the city's interest in property acquired by in rem foreclosure, as provided for in this action, whenever the commissioner of finance shall accept as to any parcel so acquired, the payment provided for in paragraph two of subdivision a of section 11-413 of this chapter. Said commissioner may accept such payment at any time within four months of the date of the city's acquisition and may further, subject to the approval of the in rem foreclosure release board, accept such payment at any time more than four months after the date of the city's acquisition but less than two years from the date on which the city's deed was recorded providing said property has not been sold or otherwise disposed of nor condemned or assigned to any agency of the city and is not the subject of contemplated use of any capital or urban renewal project of the city.

§ 11-424.1 In rem foreclosure release board. There shall be an in rem foreclosure release board consisting of the mayor, the speaker of the city council, the borough president, the corporation counsel and the commissioner of finance. Members of the board may, by written authority filed with the board and with the city clerk, appoint delegates to act on their behalf as members of the board. The board shall have the power, acting by resolution, to authorize the release of the city's interest in property acquired by in rem tax foreclosure in accordance with sections 11-412.1 and 11-424 of the code based upon a determination, in its discretion, that such release would be in the best interests of the city. The board shall act after a meeting at which the public has been provided an opportunity to comment on the proposed action. A resolution of the board authorizing a release of the city's interest in any property shall be adopted only upon the affirmative vote of not less than a majority of all the members of the board. The board may consider any information it deems relevant to a determination. The board shall not be required to state the reasons for its determination.

§ 11-425 Agreements for payment of delinquent taxes and charges in installments. a. During the period beginning on May ninth, nineteen hundred seventy-seven and ending on June thirtieth, nineteen hundred seventy-seven, the commissioner of finance or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in this section; provided, however, that if the commissioner of finance or, where applicable, the commissioner of general services determines in his or her sole discretion that good cause exists, he or she may make and execute such agreements during an additional period ending not later than July thirty-first, nineteen hundred seventy-seven.

b. (1) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two hundred percent; provided, however, in no event shall such factor be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first of July, October, January and April.

(2) If an agreement authorized by paragraph one of this subdivision is executed prior to the time the commissioner of finance files in the office of the county clerk a list of delinquent taxes covering the city or portion of the city in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes, provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid as they became due or within the period of grace provided by law. In the event of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to May ninth, nineteen hundred seventy-seven, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to May ninth, nineteen hundred seventy-seven, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to May ninth, nineteen hundred seventy-seven is not cancelled as herein provided, any installments due and payable under such agreement on or after July first, nineteen hundred seventy-seven shall be subject to interest at the rate specified in paragraph five of this subdivision, but only if, as of July first, nineteen hundred seventy-seven, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in said paragraph five.

(5) When an agreement has been entered into pursuant to this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of seven percent per annum from July first, nineteen hundred seventy-seven to the date of payment of each installment. Any interest accrued or accruing prior to July first, nineteen hundred seventy-seven shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance

shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this title.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized by this section, the commissioner of finance may in his or her discretion include in such agreements such additional terms and conditions, not inconsistent with this section, as he or she determines to be necessary in order to properly carry out the provisions of this section. The commissioner may also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure is made within the four-month period specified in subdivision f of section 11-424 of this chapter, and provided such application is made during the period specified in subdivision a of this section, the provisions of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby.

(2) At the time of filing the application for release, an applicant who elects to have the provisions of this subdivision apply to him or her, shall pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter, for this purpose, the amount specified in paragraph two thereof shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to the preceding paragraph shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by the applicant shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to paragraph two hereof, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from July first, nineteen hundred seventy-seven to the date of payment of each installment. Any interest accrued or accruing prior to July first, nineteen hundred seventy-seven shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments

or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to this subdivision shall be granted until the final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated, and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by the preceding paragraphs of this subdivision to be included in agreements authorized thereby, the commissioner of general services may in his or her discretion include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

§ 11-426 Agreements for payment of delinquent taxes and charges in installments. a. During the period beginning on December second, nineteen hundred seventy-seven and ending on March thirty-first, nineteen hundred seventy-eight, the commissioner of finance, or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in this section.

b. (1) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two hundred percent. In no event, however, shall the factor referred to in the preceding sentence be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first of July, October, January and April.

(2) If an agreement authorized by paragraph one of this subdivision is executed prior to the time the commissioner of finance files in the office of the county clerk a list of delinquent taxes covering the city or portion of the city in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes, provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid as they became due or within the period of grace provided by law. In the event of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to December second, nineteen hundred seventy-seven, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to December second, nineteen hundred seventy-seven, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to December second, nineteen hundred seventy-seven is not cancelled as herein provided, any installments due and payable under such agreement on or after April first, nineteen hundred seventy-eight shall be subject to interest at the rate specified in paragraph five of this subdivision, but only if, as of April first, nineteen hundred seventy-eight, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in said paragraph five.

(5) When an agreement has been entered into pursuant to this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement to be calculated at the rate of seven percent per annum from April first, nineteen hundred seventy-eight to the date of payment of each installment. Any interest accrued or accruing prior to April first, nineteen hundred seventy-eight shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance

shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this title.

(6) In addition to the terms and conditions required by this subdivision to be included in agreements authorized by this section, the commissioner of finance may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this section, as such commissioner determines to be necessary in order to properly carry out the provisions of this section. The commissioner of finance may also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure is made within the four-month period specified in subdivision f of section 11-424 of this chapter, and provided such application is made during the period specified in subdivision a of this section, the following provisions of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby.

(2) At the time of filing the application for release, an applicant who elects to have the provisions of this subdivision apply to him or her, shall pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter, for this purpose, the amount specified in such paragraph two shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to the preceding paragraph shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by him or her shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to such paragraph two, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from April first, nineteen hundred seventy-eight to the date of payment of each installment. Any interest accrued or accruing prior to April first, nineteen hundred seventy-eight shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments

or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to this subdivision shall be granted until the final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated, and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by this subdivision to be included in agreements authorized thereby, the commissioner of general services may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

§ 11-427 Agreements for payment of delinquent taxes and charges in installments. a. During the period beginning September first, nineteen hundred seventy-eight and ending December thirty-first, nineteen hundred seventy-eight, the commissioner of finance, or, when so specified hereinafter, the commissioner of general services, shall be authorized and empowered to make and execute agreements in the circumstances and subject to the terms, conditions and limitations set forth in this section; provided, however, that if the commissioner of finance or, where applicable, the commissioner of general services, determines in his or her sole discretion that good cause exists, he or she may make and execute such agreements during an additional period ending not later than January thirty-first, nineteen hundred seventy-nine.

b. (1) (i) Whenever it shall appear that a tax lien on a parcel has been due and unpaid for a period of at least six months from the date on which the tax, assessment or other legal charge represented thereby became a lien, the commissioner of finance may enter into an agreement with the owner of such parcel or other person claiming to have an interest therein providing for the payment of such delinquent taxes, assessments or other legal charges and interest and penalties in installments, the first of which shall be equal to at least fifteen percent of such arrears and shall be payable upon the execution of such agreement. Each remaining installment shall be equal to at least an amount produced by dividing the balance of such arrears by a factor determined by multiplying the number of quarters of such arrears by two.

(ii) In no event, however, shall the factor referred to in subparagraph (i) of this paragraph be in excess of thirty-two. Each such remaining installment shall be payable quarterly on the first of July, October, January and April.

(2) If an agreement authorized by paragraph one of this subdivision is executed prior to the time the commissioner of finance files in the office of the county clerk a list of delinquent taxes covering the city or portion of the city in which the subject parcel is located, such parcel shall be excluded from such list of delinquent taxes, provided, at the time such list is filed, there is no default in the agreement and all current taxes, assessments or other legal charges were paid as they became due or within the period of grace provided by law. In the event

of any default in the agreement or any failure to make timely payment of any current item, the parcel shall, if then delinquent for the applicable period specified in section 11-404 of this chapter, be eligible for inclusion in any list of delinquent taxes thereafter filed.

(3) If an in rem foreclosure action has been commenced against any parcel prior to September first, nineteen hundred seventy-eight, the commissioner of finance may, notwithstanding the provisions of paragraph three of subdivision a of section 11-413 of this chapter, enter into an agreement authorized and described in the foregoing provisions of this section with respect to such parcel. However, if such an agreement is entered into subsequent to the last date for redemption specified in subdivision a of section 11-407 of this chapter, there shall be paid to the commissioner of finance at the time said agreement is executed an amount equal to the penalty which would have been payable under subdivision c of section 11-407 of this chapter had the person executing the agreement made a late redemption payment. Such amount shall be in addition to any installment payments required to be made under the agreement and shall not be credited against any such installment payments. Any parcel which is the subject of an agreement made pursuant to this paragraph may, prior to final judgment, be withdrawn from the action, provided there has been no default in the agreement, and provided further that all current taxes, assessments or other legal charges are paid when they become due or within the period of grace provided by law. Such withdrawal shall be effected by the commissioner of finance in the manner provided in section 11-413 of this chapter.

(4) Any person who, prior to September first, nineteen hundred seventy-eight, has made, executed and filed with the commissioner of finance an agreement pursuant to the provisions of paragraph three of subdivision a of section 11-413 of this chapter, shall be permitted to make application to the commissioner of finance for the purpose of having such agreement cancelled and a new agreement executed as hereinabove provided.

If an agreement executed prior to September first, nineteen hundred seventy-eight is not cancelled as herein provided, any installments due and payable under such agreement on or after February first, nineteen hundred seventy-nine shall be subject to interest at the rate specified in paragraph six of this subdivision, but only if, as of February first, nineteen hundred seventy-nine, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in paragraph six of this subdivision.

(5) Notwithstanding the preceding paragraphs of this subdivision, no owner of, or other person claiming to have an interest in, any parcel shall be eligible to enter into an agreement authorized by such paragraphs where such parcel was included in an in rem foreclosure action but was severed therefrom pursuant to the judgment of foreclosure in such action because an answer was still pending as to such parcel. The commissioner of finance may, however, on notice to the corporation counsel, enter into an agreement with such owner or other interested person providing for the payment of all current taxes, assessments or other legal charges on the parcel as they become due or within the grace period provided by law, and, in addition, providing for payment of the amount of all delinquent taxes, assessments or other legal charges and interest due as of the date the agreement is executed in installments, the first of which shall be equal to at least twenty-five percent of

such amount and shall be payable upon the execution of such agreement, and the balance of which shall be payable in twelve equal quarterly installments, each of which shall be paid on the first of July, October, January and April. In addition, there shall be paid to the commissioner of finance at the time such agreement is executed a penalty equal to five percent of the amount of the delinquent taxes, assessments or other legal charges and interest due as of the date of the agreement, which penalty shall not exceed five hundred dollars. Any installments due and payable on or after February first, nineteen hundred seventy-nine under an agreement described in this paragraph shall be subject to interest at the rate specified in paragraph six of this subdivision, but only if, as of February first, nineteen hundred seventy-nine, there is no default in the agreement and all current taxes, assessments or other legal charges have been paid within the time allowed by law. Such rate of interest shall be calculated in the manner and shall be subject to all the conditions provided in paragraph six of this subdivision.

Upon receipt of the final payment due under an agreement executed pursuant to this paragraph, the commissioner of finance shall discontinue the in rem action pending with respect to the parcel which is the subject of such agreement, and shall cancel the lis pendens pertaining thereto by issuing a certificate of withdrawal pursuant to section 11-413 of this chapter. In the event of any default in such agreement or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement and the answer which was the basis for the severance of the subject parcel from the in rem action shall both be deemed null and void and the city shall be entitled to acquire title to such parcel by entry of an appropriate supplemental judgment of foreclosure in such in rem action without further notice to the answering party.

(6) When an agreement has been entered into pursuant to this subdivision, the commissioner of finance shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, charge, collect and receive interest on the arrears due and payable under such agreement, to be calculated at the rate of seven percent per annum from February first, nineteen hundred seventy-nine to the date of payment of each installment. Any interest accrued or accruing prior to February first, nineteen hundred seventy-nine shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this section, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law. In the event of any default or failure to make timely payment of any current item, the seven percent rate of interest specified in this paragraph shall thereupon cease to be applicable and the commissioner of finance shall thereafter charge, collect and receive interest in the manner and at the rates otherwise specified in this chapter.

(7) In addition to the terms and conditions required by this subdivision to be included in agreements authorized by this section, the commissioner of finance may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this section, as the commissioner determines to be necessary in order to properly carry out the provisions of this section. The commissioner may

also adopt such rules and regulations as may be necessary to carry out the provisions of this section.

c. (1) If, pursuant to the provisions of section 11-424 of this chapter, an application for the release of property acquired by the city through in rem tax foreclosure has been filed within the four-month period specified in subdivision f of such section, and the sixty-day period for payment referred to in such subdivision has not expired prior to the commencement of the period specified in subdivision a of this section, the provisions of this subdivision shall, at the election of the applicant, apply with respect to such application and the release sought thereby, provided notice of such election is given to the commissioner of general services during the period specified in subdivision a of this section, but in no event later than the last day of the sixty-day period referred to in subdivision f of section 11-424 of this chapter.

(2) An applicant who elects to have the provisions of this subdivision apply to him or her, shall, at the time such applicant notifies the commissioner of general services of his or her election, pay to the city the amounts specified in paragraphs two, three and four of subdivision d of section 11-424 of this chapter; for this purpose, the amount specified in paragraph two thereof shall be deemed to be the amount which would have been required to be paid thereunder had this section not been in effect. Concurrent with the making of such payment, the applicant shall enter into an agreement with the commissioner of general services providing for the payment of all current taxes, assessments or other legal charges on the property as they become due or within the grace period provided by law, and, in addition, providing for the payment of the amount specified in paragraph one of subdivision d of section 11-424 of this chapter in installments, the first of which shall be equal to at least twenty-five percent of such amount and shall be payable upon the execution of such agreement. The balance of such amount shall be payable in twelve equal quarterly installments, each of which shall be paid quarterly on the first of July, October, January and April.

(3) Pending approval by the corporation counsel of an application for release as to form, timeliness and eligibility of the applicant, all payments made pursuant to paragraph three of this subdivision shall be held in escrow; in the event the corporation counsel disapproves the application, such payments shall be returned to the applicant, and the agreement executed by him or her shall thereupon be cancelled.

(4) In the case of any agreement made and executed pursuant to paragraph two of this subdivision, interest on any installment due and payable thereunder shall, notwithstanding the rates of interest prescribed in section 11-224, 11-312 or 11-313 of this title, be charged, collected and received at the rate of seven percent per annum from February first, nineteen hundred seventy-nine to the date of payment of each installment. Any interest accrued or accruing prior to February first, nineteen hundred seventy-nine shall not be affected by the provisions of this paragraph, but shall be charged, collected and received in the manner and at the rates specified in section 11-224, 11-312 or 11-313 of this title. The seven percent rate of interest specified in this paragraph shall be applicable only if (i) there is no default in the agreement entered into as provided in this subdivision, and (ii) all current taxes, assessments or other legal charges are paid as they become due or within the period of grace provided by law.

(5) No release for which application has been made pursuant to subdivision f of section 11-424 of this chapter shall be granted until the

final payment under the agreement herein provided is received by the city. Upon receipt of such final payment by the city the corporation counsel shall effect the release in the manner provided in section 11-424 of this chapter. In the event of any default in an agreement executed as provided in this subdivision or any failure to pay current taxes, assessments or other legal charges as they become due or within the grace period provided by law, such agreement shall thereupon become void, the release process shall be terminated and all payments theretofore made shall be forfeited to the city.

(6) In addition to the terms and conditions required by this subdivision to be included in agreements authorized thereby, the commissioner of general services may, in his or her discretion, include in such agreements such additional terms and conditions, not inconsistent with this subdivision, as the commissioner determines to be necessary in order to properly carry out the provisions hereof. The commissioner of general services may also adopt such rules and regulations as may be necessary to carry out the provisions of this subdivision.

§ 11-428 Disposition of proceeds of sales of properties acquired by city through tax enforcement foreclosure proceedings. The proceeds of the sale of real property acquired through tax enforcement foreclosure proceedings, or by deed in lieu thereof, including subsequent receipts in diminution of purchase money mortgages accepted at the time of sale, shall be applied as follows:

a. The amount of the unpaid real estate taxes accrued against such property from the first of January or the first of July, whichever first immediately precedes the date on which title vested in the city to the date of conveyance of title by the city, without interest or penalties thereon, shall be credited to the tax deficiency account.

b. The balance, if any, remaining after deduction of the amount specified in paragraph a hereof, shall be paid into the funds hereinafter specified in the following order:

1. A sum equal to the amount of the unpaid assessments for local improvements accrued against such property at the date of commencement of the foreclosure proceeding and up to the date of conveyance of title by the city, without interest or penalties thereon, shall be paid into the appropriate assessment funds.

2. A sum equal to the amount of unpaid sewer rents, including interest and penalties thereon, accrued against such property at the date of commencement of the foreclosure proceedings and up to the date of conveyance of title by the city shall be paid into the sewer fund.

3. The amount of the brokerage fee and other expenses expended by the city in connection with such sale shall be paid into the fund or code to which such fee was charged.

4. The balance of such proceeds, if any, and the interest on any purchase money mortgage accepted by the city at the time of such sale shall be paid into the general fund. In the event that any part of such balance is represented by bonds and mortgages, such bonds and mortgages may be deposited in the tax appropriation and general fund stabilization reserve fund and a sum equal to the amount of the cash represented by such bonds and mortgages shall in such event be transferred from the tax appropriation and general fund stabilization reserve fund to the general fund.

## CHAPTER 5
## CITY UNINCORPORATED BUSINESS INCOME TAX

§ 11-501 Meaning of terms. (a) General. Unless a different meaning is clearly required, any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference in this chapter to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in this chapter as an appendix or as included by reference to an appendix of another chapter enacted by the same law as enacts this chapter. (The quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this chapter.)

(b) "State", "this state" or "the state" when used in this chapter shall mean the state of New York.

(c) "Local income taxes", when used in this chapter shall mean an income tax imposed by a political subdivision of a state.

(d) "Commissioner of finance" when used in this chapter shall mean the commissioner of finance of the city.

(e) "Department of finance" when used in this chapter shall mean the department of finance of the city.

(f) "Tax appeals tribunal" when used in this chapter shall mean the tax appeals tribunal established by section one hundred sixty-eight of the charter of the preceding municipality as it existed January first, two thousand nine.

(g) "Unincorporated business entire net income" when used in this chapter shall mean the excess of the unincorporated business gross income of an unincorporated business over its unincorporated business deductions.

(h) "Investment capital" when used in this chapter shall mean investments of the unincorporated business in stocks, bonds and other securities, corporate and governmental (excluding governmental stocks, bonds and other securities the interest or dividends from which are fully exempt from tax under this chapter, other than any such governmental stock, bond or other security which is sold or otherwise disposed of during the taxable year in a transaction which results in a gain or loss which is included in computing unincorporated business entire net income for the taxable year), not held for sale to customers in the regular course of business, provided, however, that in the discretion of the commissioner of finance, there shall be deducted from investment capital any liabilities of the unincorporated business which are directly or indirectly attributable to investment capital.

(i) "Investment income" when used in this chapter shall mean income, gains and losses from investment capital, to the extent included in computing unincorporated business entire net income, less, in the discretion of the commissioner of finance, any deductions allowable in computing unincorporated business entire net income which are directly or indirectly attributable to investment capital or investment income, provided, however, that in no case shall investment income exceed unincorporated business entire net income.

(j) "Business capital" when used in this chapter shall mean all assets of the unincorporated business other than investment capital, less liabilities of the unincorporated business not deducted from investment

capital, except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect.

(k) "Business income" when used in this chapter shall mean unincorporated business entire net income minus investment income.

(l) "Dealer" when used in this chapter shall mean an individual or unincorporated entity that (A) holds or disposes of property that is stock in trade of the taxpayer, inventory or is otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business, or (B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in property with customers in the ordinary course of the taxpayer's trade or business, provided, however, an individual or unincorporated entity shall not be treated as a dealer based solely on such individual's or entity's ownership of an interest in an entity that is a dealer, and provided, further, that an unincorporated entity shall not be treated as a dealer based solely on the ownership by a dealer of an interest in that unincorporated entity.

(m) "Unincorporated entity" when used in this chapter shall include an entity classified as a partnership for federal income tax purposes regardless of whether the entity is formed as a corporation, joint-stock company, joint-stock association, body corporate or body politic or whether the entity is organized under a federal or state statute, or under a statute of a federally recognized Indian tribe, or under a statute of a country other than the United States that describes or refers to the entity as incorporated.

§ 11-502 Unincorporated business defined. (a) General. An unincorporated business means any trade, business, profession or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership, a fiduciary, a corporation in liquidation or an unincorporated entity that has made the election permitted under paragraph (b) of subdivision one of section 11-602 of this title (but only for the period during which such election is in effect), but not including any entity subject to tax under chapter six of this title and not including any entity doing an insurance business as a member of the New York insurance exchange described in paragraph one of subsection (b) of section six thousand two hundred one of the insurance law. Unincorporated businesses subject to tax under a local law of the city imposing a tax on utilities shall not be subject to tax under this chapter; provided, however, that unincorporated businesses, other than (1) utility businesses subject to the supervision of the state department of public service and (2) for taxable years beginning on or after August first, two thousand two, utilities as defined in subdivision six of section 11-1101 of this title, which are subject to tax under a local law of the city imposing a tax on vendors of utility services shall be subject to tax under this chapter on that percentage of their entire net income allocable to the city under section 11-508 of this chapter which their receipts other than those taxable under such local law taxing vendors of utility services is of their total receipts. If an individual or an unincorporated entity carries on wholly or partly in the city two or more unincorporated businesses, all such businesses shall be treated as one unincorporated business for the purposes of this chapter. For purposes of this chapter, an unincorporated entity shall be treated as carrying on any trade, business, profession or occupation carried on in whole or in part in the city by any other unincorporated entity in which the first unincorporated entity owns an interest, and the ownership by an unincorporated entity of an interest in another unincorporated entity that is not carrying on any trade, business,

profession, or occupation in whole or in part in the city shall not be deemed the conduct of an unincorporated business by the first unincorporated entity. Notwithstanding anything to the contrary in the preceding sentence, for taxable years beginning on or after August first, two thousand two, an unincorporated business that is a partner in a partnership subject to tax under a local law of the city imposing a tax on utilities, as defined in subdivision six of section 11-1101 of this title, shall not be considered to be carrying on the trade, business, profession or occupation carried on by such partnership.

(b) Services as employee. The performance of services by an individual as an employee or as an officer or director of a corporation, society, association, or political entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual.

(c) Purchase and sale for own account. (1) Definitions. (A) Property. For purposes of this subdivision, property shall mean real and personal property, including but not limited to, property qualifying as investment capital within the meaning of subdivision (h) of section 11-501 of this chapter, other stocks, notes, bonds, debentures, or other evidences of indebtedness, interest rate, currency, or equity notional principal contracts, foreign currencies, interests in, or derivative financial instruments (including options, forward or futures contracts, short positions, and similar financial instruments) in any property described above, and any commodity traded on or subject to the rules of a board of trade or commodity exchange, provided, however, property shall not include: (i) debt instruments issued by the taxpayer; (ii) accounts receivable held by a factor; (iii) property held as stock in trade, inventory or otherwise held for sale to customers in the ordinary course of the taxpayer's trade or business; (iv) debt instruments acquired in the ordinary course of the taxpayer's trade or business for funds loaned, services rendered or for the sale, rental or other transfer of property by the taxpayer; (v) interests in unincorporated entities; or (vi) positions in property described above entered into, assumed, offset, assigned or terminated by a dealer with respect to such positions in property.

(B) Investor. For purposes of this subdivision, a taxpayer shall be treated as acquiring, holding or disposing of an interest in an unincorporated entity as an investor if: (i) the unincorporated entity meets the requirements of subparagraph (B) of paragraph four of this subdivision and the taxpayer does not receive a distributive share of such entity's income, gain, loss, deduction, credit and basis from a business carried on in whole or in part in the city that is materially greater than its distributive share of any other item of income, gain, loss deduction, credit or basis of such entity; or (ii) with respect to any other unincorporated entity, the taxpayer is neither a general partner nor authorized under the entity's governing instrument to manage or participate in, nor managing, nor participating in, the day-to-day business of the unincorporated entity.

(2) An individual or other unincorporated entity, except a dealer as defined in subdivision (1) of section 11-501 of this chapter, shall not be deemed engaged in an unincorporated business solely by reason of (A) the purchase, holding and sale for his, her or its own account of property, as defined in paragraph one of this subdivision, or the entry into, assumption, offset, assignment, or other termination of a position in any property so defined, or both, (B) the acquisition, holding or disposition, other than in the ordinary course of a trade or business,

of interests in unincorporated entities engaged solely in activities described in subparagraph (A), (B) or (C) of this paragraph, or (C) any combination of the activities described in subparagraphs (A) and (B) of this paragraph and any other activity not otherwise constituting the conduct of an unincorporated business subject to the tax imposed by this chapter, but this paragraph shall not apply if the unincorporated entity is taxable as a corporation for federal income tax purposes.

(3) Notwithstanding anything to the contrary, the receipt by an individual or other unincorporated entity of twenty-five thousand dollars or less of gross receipts during the taxable year (determined without regard to any deductions) from an unincorporated business wholly or partly carried on within the city by such individual or unincorporated entity shall not cause such individual or other unincorporated entity to be treated as not engaged solely in the activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision.

(4) (A) If a taxpayer that is an unincorporated entity is primarily engaged in (i) activities described in subparagraph (A), (B) or (C) of paragraph two of this subdivision, or (ii) the acquisition, holding or disposition, other than in the ordinary course of a trade or business, of interests as an investor in unincorporated entities carrying on any unincorporated business in whole or in part in the city, or both, the activities described in subparagraph (A), (B), or (C) of paragraph two of this subdivision carried on by the taxpayer or by any unincorporated entity primarily engaged in the activities described in clause (i) or (ii) of this subparagraph in which the taxpayer owns an interest shall not be deemed an unincorporated business carried on by the taxpayer.

(B) For purposes of subparagraph (A) of this paragraph, an unincorporated entity will be treated as primarily engaged in activities described in clause (i) or (ii) of subparagraph (A) of this paragraph, or both, if at least ninety percent of the value of its total assets is represented by assets described in subparagraph (C) of this paragraph.

(C) For purposes of subparagraph (B) of this paragraph, assets described in this subparagraph include:

(i) property as defined in paragraph one of this subdivision;

(ii) interests in unincorporated entities not carrying on any unincorporated business in whole or in part in the city; and

(iii) interests in unincorporated entities carrying on an unincorporated business in whole or in part in the city held by the taxpayer as an investor, as defined in paragraph one of this subdivision.

(D) For purposes of determining whether a taxpayer meets the requirements of subparagraph (B) of this paragraph, the value of assets described in subparagraph (C) of this paragraph shall be the average monthly gross value of the assets of the taxpayer. For purposes of this paragraph, the value of assets of the taxpayer that consist of real property or marketable securities shall be the fair market value thereof and the value of assets other than real property or marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles. In case it shall appear to the commissioner of finance that the use of gross value in determining whether the requirements of subparagraph (B) of this paragraph are met, improperly or inaccurately reflects the taxpayer's primary activities, the commissioner of finance is authorized in his or her discretion and in such manner as he or she may determine, to reduce the gross value of the taxpayer's assets by liabilities attributable thereto or to eliminate assets, so as to properly and accurately reflect the taxpayer's primary activities.

(d) Holding, leasing or managing real property. An owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property. If an owner of real property or lessee or fiduciary (except a dealer holding real property primarily for sale to customers in the ordinary course of his or her trade or business) who is holding, leasing or managing real property is also carrying on an unincorporated business in whole or in part in the city, whether or not such unincorporated business is carried on at or is connected with such real property, such holding, leasing or managing of real property shall not be deemed an unincorporated business if, and only to the extent that, such real property is held, leased or managed for the purpose of producing rental income from such real property or gain upon the sale or other disposition of such real property. For purposes of this subdivision, the conduct by such owner, lessee or fiduciary, at such real property, of a trade, business, profession or occupation, including, but not limited to, a garage, restaurant, laundry or health club, shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business, if such trade, business, profession or occupation is conducted solely for the benefit of tenants at such real property, as an incidental service to such tenants, and is not open or available to the general public, provided, however, if any such owner, lessee or fiduciary operates a garage, parking lot or other similar facility at such real property that is open or available to the general public, the provision by any such owner, lessee or fiduciary of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis shall be deemed to be an incident to the holding, leasing or managing of such real property, and shall not be deemed the conduct of an unincorporated business if, and only to the extent that, such monthly or longer term parking, garaging or storing service is provided to tenants at such real property as an incidental service to such tenants. If an owner, lessee or fiduciary holding, leasing or managing real property operates at such real property a garage, parking lot or other similar facility that is open or available to the public, each such owner, lessee or fiduciary shall file, together with and as a part of the returns required under section 11-514 of this chapter, a report or schedule for each such garage, parking lot or other similar facility, or in the discretion of the commissioner, make a separate entry on such returns, identifying the specific location and address, license number and licensed capacity of each such garage, parking lot or other similar facility, and shall include such additional information, data and other matters relating to the provision of such monthly or longer term parking, garaging or storing service to tenants as shall be prescribed by the commissioner of finance. If the separate information required to be reported by any owner, lessee or fiduciary holding, leasing or managing real property for any garage, parking lot or other similar facility at such real property that is open or available to the public is not contained in the returns required under section 11-514 of this chapter, or in any amended returns, in any material respect, the provision of parking, garaging or storing service to tenants at such real property shall be deemed the conduct of an unincorporated business and not incident to the holding, leasing or managing of such real property.

(e) Sales representative. An individual, other than one who maintains an office or who employs one or more assistants or who otherwise regularly carries on a business, shall not be deemed engaged in an unincor-

porated business solely by reason of selling goods, wares, merchandise or insurance for more than one enterprise. For purposes of this subdivision, space utilized solely for the display of merchandise and/or for the maintenance and storage of records normally used in the course of business shall not be deemed an office, and the employment of clerical and secretarial assistance shall not be deemed the employment of assistants.

(f) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall not be deemed an unincorporated business regardless of whether subject to federal income tax on unrelated business taxable income.

§ 11-503 Imposition of tax. (a) General. A tax at the rate of four percent is hereby imposed for each taxable year, beginning with taxable years ending after January first, nineteen hundred sixty-six, on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within the city. This tax shall be in addition to any other taxes imposed.

(b) Credit against tax. (1) For each taxable year beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is six hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds six hundred dollars but is less than eight hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is eight hundred dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is eight hundred dollars or more, no credit shall be allowed.

(2) For each taxable year beginning in nineteen hundred ninety-six:

(A) if the tax computed under subdivision (a) of this section is eight hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds eight hundred dollars but is less than one thousand dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is one thousand dollars minus the amount of such tax and the denominator of which is two hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is one thousand dollars or more, no credit shall be allowed.

(3) For each taxable year beginning after nineteen hundred ninety-six but before two thousand nine:

(A) if the tax computed under subdivision (a) of this section is one thousand eight hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds one thousand eight hundred dollars but is less than three thousand two hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is three thousand two hundred dollars minus the amount of such tax and the denominator of which is one thousand four hundred dollars; or

(C) if the tax computed under subdivision (a) of this section is three thousand two hundred dollars or more, no credit shall be allowed.

(3-a) For each taxable year beginning after two thousand eight:

(A) if the tax computed under subdivision (a) of this section is three thousand four hundred dollars or less, a credit shall be allowed for the entire amount of such tax;

(B) if the tax computed under subdivision (a) of this section exceeds three thousand four hundred dollars but is less than five thousand four hundred dollars, a credit shall be allowed in the amount determined by multiplying such tax by a fraction the numerator of which is five thousand four hundred dollars minus the amount of such tax and the denominator of which is two thousand dollars; or

(C) if the tax computed under subdivision (a) of this section is five thousand four hundred dollars or more, no credit shall be allowed.

(4) If separate partnerships, joint ventures or other unincorporated entities have substantially the same partners or members, each of such partners or members has substantially the same interest in each of such partnerships, joint ventures or other unincorporated entities, and such partnerships, joint ventures or other unincorporated entities are engaged in substantially the same business or businesses or in substantially related businesses, all of such partnerships, joint ventures or other unincorporated entities shall be treated as one unincorporated business for purposes of this subdivision. The provisions of this paragraph shall not be construed to limit or affect the meaning or application of any other provision of this chapter.

(5) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken prior to any other credit allowed by this section.

(c) Credit relating to stock transfer tax. (1) In addition to any other credit permitted under this section, a taxpayer shall be allowed a credit, to be credited or refunded in the manner hereinafter provided in this subdivision, against the tax imposed by this chapter after the allowance of any other credit under this section. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring on and after August first, nineteen hundred seventy-six and paid by such taxpayer, except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of the tax law.

(2) For purposes of this subdivision:

a. the term "taxpayer" shall mean any unincorporated business subject to tax under this chapter registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph b of this paragraph, and

b. the term "market making transaction" shall mean any transaction involving a sale, including a short sale, by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business including transfers which are part of an underwriting,

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to subclause (c) of clause (ii) of subparagraph b of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, except as otherwise provided in subdivision (g) of sections 11-512 and 11-514 of this chapter; provided, however, that the provisions of this chapter notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision (c) of section 11-528 of this chapter notwithstanding, interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(4) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision (determined without regard to the provisions of this paragraph) exceeds fifty percent of all rebates (provided for under the provisions of section two hundred eighty-a of article twelve of the tax law) allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

(d) Credit relating to certain sales and compensating use taxes. (1) In addition to the credits allowed by subdivisions (b) and (c) of this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credit or refund of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by subchapter two of chapter six of this title, for any periods embraced within the taxable year of the taxpayer under this chapter.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or

refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this section in a prior taxable year, the amount of such tax refund or credit shall be added to the tax imposed by this section, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(e) Credit relating to the annual increase in certain payments to a landlord by a taxpayer relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded, without interest, in the manner hereinafter provided in this section.

(A) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities, and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this chapter. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this chapter.

The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for herein shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest." In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city.

The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation, whichever period is shorter.

(B) Definitions: When used in this section, "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

"Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given week.

"Industrial and commercial incentive board" means the board created pursuant to subchapter two of chapter two of this title.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(f) Credit relating to certain expenses involved in the cost of relocating industrial and commercial employment opportunities. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this section. The amount of such credit shall be:

(A) A maximum of three hundred dollars for each commercial employment and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event; provided, however, that no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (i) that are within an industrial business zone established pursuant to section 22-626 of the code of the preceding municipality and (ii) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used.

(B) Definitions: When used in this section, "Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture

and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(i) Relocation and employment assistance credit. (1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code of the preceding municipality is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code of the preceding municipality to take such credit against a gross receipts tax imposed under chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this paragraph for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation

pursuant to subdivision (o) of section 22-621 of the code of the preceding municipality. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(3) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(4) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code of the preceding municipality dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph one of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

(j) (1) If a partner in an unincorporated business is taxable under this chapter and is required to include in unincorporated business taxable income his, her or its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such partner shall be allowed a credit against the tax imposed by this chapter equal to the lesser of the amounts determined in subparagraphs (A) and (B) of this paragraph:

(A) The amount determined in this subparagraph is the product of (i) the sum of (I) the tax imposed by this chapter on the unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under this section (except the credit allowed by subdivision (b) of this section) for its taxable year ending within or with the taxable year of the partner, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(B) The amount determined in this subparagraph is the difference between (i) the tax computed pursuant to this chapter on the unincorporated business taxable income of the partner, without allowance of any credits allowed by this section, and (ii) the tax so computed, determined as if the partner had no such distributive share or guaranteed payments with respect to the unincorporated business, provided, however, that the amounts computed in clauses (i) and (ii) of this subparagraph shall be computed with the following modifications:

(I) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss;

(II) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the unincorporated business taxable income of the partner is less than zero, such unincorporated business taxable income shall be treated as zero; and

(III) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero. The amount determined in this subparagraph shall not be less than zero.

(2) (A) Notwithstanding anything to the contrary in paragraph one of this subdivision, the credit or the sum of the credits that may be taken by a partner for a taxable year under this subdivision with respect to an unincorporated business or unincorporated businesses in which he, she or it is a partner shall not exceed the tax imposed on the unincorporated business taxable income of such partner under this chapter for such taxable year reduced by the credit allowed under subdivision (b) of this section. If the credit allowed under paragraph one of this subdivision or the sum of such credits exceeds such tax as so reduced, 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, provided, the credit determined for the taxable year under paragraph one 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.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, in the case of a partner which is a partnership, no credit carryforward to any taxable year shall be allowed unless one or more of the partners therein during such taxable year were persons

having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which was allowed the credit for which a carryforward is claimed. In such event, the carryforward allowable on account of such credit shall not exceed the percentage of the amount otherwise allowable, determined by dividing (i) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the credit is carried forward, attributable to such partners, by (ii) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryforward otherwise allowable exceeds the amount allowable pursuant to this subparagraph shall not be a carryforward to any other taxable year.

(3) The credit allowed under this subdivision shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under this chapter for any taxable year beginning before July first, nineteen hundred ninety-four.

(4) Notwithstanding anything to the contrary, the credit allowable under this subdivision shall be taken after the credit allowed by subdivision (b) of this section is taken, but before any other credit allowed by this section is taken.

(5) The commissioner of finance of the city of Staten Island shall convene a working group, consisting of representatives of the department of finance of the city of Staten Island and representatives of affected industries, and other persons the commissioner deems appropriate, to study the treatment under the unincorporated business tax of income from investment and real estate activities and the impact of the credit permitted by this subdivision, including but not limited to cases where interests in a taxpayer are held by another taxpayer subject to tax on unincorporated business taxable income and the first taxpayer is entitled to claim a deduction for a net operating loss carryover and the second is not entitled to a corresponding deduction with the result, in certain cases, that the net income allocated to the second taxpayer may be subject to an effective rate of tax in excess of the rate imposed by this chapter. In addition, the working group shall also study the tax treatment of parking garages which are open or available to the general public and which also provide available space to tenants. In conducting such study, such working group shall take into account such factors as economic development, tax administration and other goals of tax policy and shall consider alternatives that would reduce disincentives for investing in corporations and other entities engaged in business in the city of Staten Island, such as exempting income from investment activities from the tax on unincorporated business taxable income. The commissioner shall prepare a report based on the deliberations of the working group on or before April fifteenth, nineteen hundred ninety-five.

(k) Credit relating to certain sales and compensating use taxes on certain services. (1) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year, and the amount of any interest imposed in connection therewith, which was paid after January first, nineteen hundred ninety-five, less any

credit or refund of such taxes (or such interest), with respect to the purchase or use by the taxpayer of the services described in subdivision (b) of section eleven hundred five-b of the tax law.

(2) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law, or of any interest imposed in connection therewith, for which the taxpayer had claimed a credit under this subdivision in a prior taxable year, the amount of such tax, or such interest, refund or credit shall be added to the tax imposed by this chapter, and such amount shall be subtracted in computing unincorporated business taxable income for the taxable year.

(l) Lower Manhattan relocation and employment assistance credit. (1) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code of the preceding municipality to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code of the preceding municipality.

(2) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(3) Except as provided in paragraph four of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(4) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for

the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-526 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(5) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions (b), (i) and (j) of this section, but prior to the deduction of any other credit allowed by this section.

(n) Industrial business zone tax credit. (1) For taxable years beginning on or after January first, two thousand six, in addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this chapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(2) When used in this subdivision, the following terms shall have the following meanings:

"Eligible business" means any business subject to tax under this chapter that (A) has been conducting substantial business operations and engaging primarily in industrial and manufacturing activities at one or more locations within the city of Staten Island or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (B) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (C) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (D) will be engaged primarily in industrial and manufacturing activities at such eligible premises.

"Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises.

"Full-time employee" means (A) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (B) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by each such person is more than fifteen hours per week but less than thirty-five hours per week.

"Industrial business zone" means an area within the city of Staten Island established pursuant to section 22-626 of the code of the preceding municipality.

"Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this chapter.

"Industrial and manufacturing activities" means activities involving the assembly of goods to create a different article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services.

"Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (A) the date of the completion of the relocation to the eligible premises or (B) ninety days from the commencement of the relocation to the eligible premises, whichever is earlier.

"Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include any costs for structural or capital improvements or items purchased in connection with the relocation.

(3) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(4) The number of full-time employees for the purposes of calculating an industrial business zone tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible premises by the eligible business in the fifty-two week period immediately following relocation.

(5) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such fifty-two week period ends.

(6) For the purposes of calculating entire net income in the taxable year that an industrial business zone tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(7) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation. Notwithstanding the foregoing, an industrial business zone tax credit allowed under this subdivision shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of the code of the preceding municipality, through a grant program administered by the business relocation assistance corporation, or through the Staten Island city printers relocation fund grant.

(8) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used.

(B) Definitions: When used in this section, "Employment Opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

"Industrial Employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

"Commercial Employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

"Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

"Full Time Position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

"Employment Opportunity Relocation Costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(2) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-526 of this chapter.

(o) Biotechnology credit. (a)(1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs three, four and five of this paragraph, subject to the limitations in subparagraph seven of this paragraph and paragraph (b) of this subdivision. For the purposes of this subdivision, "qualified emerging technology company" shall mean a company located in city: (A) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (B) a company that has research and development activities in city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, "biotechnologies" shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed

mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (A) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (B) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (C) have gross revenues, along with the gross revenues of its "affiliates" and "related members" not exceeding twenty million dollars for the calendar year immediately preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "affiliates" shall mean those corporations that are members of the same affiliated group, as defined in section fifteen hundred four of the internal revenue code, as the taxpayer. For the purposes of this subdivision, "related members" shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters six, eleven and seventeen of this title, and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in section 179(d) of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (A) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (B) the costs or expenses associated with quality control of the research and development, (C) fees for use of sophisticated technology facilities and processes, (D) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this subchapter. For the purposes of this subdivision, "research and development property" shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "qualified research expenses" shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this paragraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this paragraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(A) The amount of credit shall be one hundred percent of the training expenses described in subparagraph (C) of this paragraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(B) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in city that (i) directly relates to biotechnology activities, and (ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level courses or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(C) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such

coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(D) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in subparagraph (C) of this paragraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in subparagraph (C) of this paragraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(E) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(F) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in city. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this

subdivision to a taxpayer exceed two hundred fifty thousand dollars per calendar year for eligible expenditures made during such calendar year.

(7) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount computed in subdivision (a) of this section. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter; provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning on or after January first, two thousand ten and before January first, two thousand nineteen.

(b)(1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(A) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was (I) located outside of the city, (II) not doing business, or (III) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(B) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty five thousand dollars per calendar year. In the case of an entity located in city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

(3) For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during each calendar year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such calendar year or other applicable period.

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the

taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

(p) Beer production credit. (1) A taxpayer subject to tax under this chapter, that is registered as a distributor under article eighteen of the tax law, and that produces sixty million or fewer gallons of beer in this state in the taxable year, shall be allowed a credit against the tax imposed by this chapter in the amount specified in paragraph two of this subdivision. Provided, however, that no credit shall be allowed for any beer produced in excess of fifteen million five hundred thousand gallons in the taxable year. Notwithstanding anything in this title to the contrary, if a partnership is allowed a credit under this subdivision, a taxpayer that is a partner in such partnership shall not be allowed a credit under this subdivision for any taxable year that includes the last day of the taxable year for which the partnership is allowed such credit.

(2) The amount of the credit per taxpayer per taxable year for each gallon of beer produced in the city on or after January first, two thousand seventeen shall be determined as follows:

(i) for the first five hundred thousand gallons of beer produced in the city in the taxable year, the credit shall equal twelve cents per gallon; and

(ii) for each gallon of beer produced in the city in the taxable year in excess of five hundred thousand gallons, the credit shall equal three and eighty-six one hundredths cents per gallon. The credit allowed under this subdivision for any taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter; provided, however, that notwithstanding the provisions of section 11-528 of this chapter, no interest shall be paid thereon.

(q) Credit for the provision of child care. In addition to any other credit allowed under this section, a taxpayer whose application for a credit authorized by section 11-144 of this title has been approved by the department of finance shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be determined as provided in such section. To the extent the amount of the credit allowed by this subdivision exceeds the amount of tax due pursuant to this chapter, as calculated without such credit, such excess amount shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-526 of this chapter, provided, however, that notwithstanding the requirements of section 11-528 of this chapter to the contrary, no interest shall be paid thereon.

§ 11-504 Taxable years to which tax applies; tax for taxable years beginning prior to and ending after January first, nineteen hundred sixty-six. (a) General. The tax imposed by section 11-503 of this chapter, with any modification permitted by subdivision (b) of this section, is imposed for each taxable year beginning with taxable years ending on or after January first, nineteen hundred sixty-six.

(b) Alternate methods for determining tax for taxable years ending on or after January first, nineteen hundred sixty-six. (1) The tax for any taxable year ending on or after January first, nineteen hundred sixty-six and before December thirty-first, nineteen hundred sixty-six, shall be an amount equal to the tax which would have been imposed had section 11-503 of this chapter been in effect for the entire taxable year, multiplied by the number of months, or major portions thereof, in such taxable year which occur after December thirty-first, nineteen hundred

sixty-five and divided by the number of months, or major portions thereof, in such taxable year.

(2) In lieu of the method of computation of tax prescribed in paragraph one of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending on or after January first, nineteen hundred sixty-six, and before December thirty-first, nineteen hundred sixty-six, which falls within the calendar year nineteen hundred sixty-six, the tax for such taxable year at the election of the taxpayer may be computed on the basis of the unincorporated business taxable income which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of such taxable year ending before December thirty-first, nineteen hundred sixty-six. Such taxable year beginning January first, nineteen hundred sixty-six and ending before December thirty-first, nineteen hundred sixty-six shall be deemed, unless clearly indicated otherwise, to be the taxable year of the taxpayer. For purposes of this paragraph, the unincorporated business exemptions allowable under section 11-510 of this chapter, the credit allowable under subdivision (b) of section 11-503 of this chapter and any net operating loss deduction as modified pursuant to subdivision (b) of section 11-507 of this chapter shall each be reduced by the same part of such exemptions, credit, or net operating loss deduction, as the case may be, as the number of months, or major portions thereof, in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months, or major portions thereof, in such taxable year. Except as provided in paragraph two, the tax for such period ending before December thirty-first, nineteen hundred sixty-six, shall be computed in accordance with the other provisions of this chapter.

§ 11-505 Unincorporated business taxable income. The unincorporated business taxable income of an unincorporated business shall be the excess of its unincorporated business entire net income allocated to the city, less the amount of:

(1) Its deductions under section 11-509 of this chapter not subject to allocation; and

(2) Its unincorporated business exemptions under section 11-510 of this chapter.

§ 11-506 Unincorporated business gross income. (a) (1) General. Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, or from the sale or other disposition by an unincorporated entity of an interest in another unincorporated entity if and to the extent such income or gain is attributable to a trade, business, profession or occupation carried on in whole or in part in the city by such other unincorporated entity, with the modifications specified in this section.

(2) The character of a partner's distributive share of gross income, gains, losses and deductions of an unincorporated entity shall be determined as if such gross income, gains, losses and deductions were realized directly by such partner regardless of how the interest in the unincorporated entity was acquired and regardless of whether the distributive share is proportionate to the partner's capital interest in the unincorporated entity, provided, however, this paragraph shall not

apply to payments to a partner treated as occurring between the unincorporated entity and one who is not a partner under section seven hundred seven of the internal revenue code, and provided, further, this paragraph shall not affect the determination of whether gross income, gains, losses or deductions of an unincorporated entity are subject to the tax imposed by this chapter as realized from an unincorporated business.

(b) Modifications increasing federal gross income. There shall be added to federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party.

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state or local income taxes.

(3) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, if the property to which such election relates was sold or otherwise disposed of during the taxable year, the amount required by such subdivision to be added to federal gross income.

(4) The entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining federal gross income but only to the extent that such taxes are incurred and paid in market making transactions.

(5) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (d) of section 11-503 of this chapter.

(6) The amount allowed as an exclusion or deduction as rent in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (e) of section 11-503 of this chapter.

(7) The amount allowed as an exclusion or deduction in determining federal gross income but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (f) of section 11-503 of this chapter.

(8) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which would properly be includible for federal income tax purposes had the taxpayer not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(9) Upon the disposition of property to which subdivision (o) of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in such subdivision fifteen attributable to such property exceeds the aggregate of the amounts described in subdivision (n) of section 11-507 of this chapter attributable to such property.

(10) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining federal gross income, but only such portion of such exclusion or

deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (g) of section 11-503 of this chapter.

(12) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law, or for any interest imposed in connection therewith, in determining federal gross income, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision (k) of section 11-503 of this chapter.

(13) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss, including but not limited to, losses from notional principal contracts, losses, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar losses from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(14) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such loss is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(15) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(16) Notwithstanding any other provision of this chapter to the contrary, the amount allowed as an exclusion or deduction in determining federal gross income of any loss realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(17) For taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest deduction allowed pursuant to section 163(j)(10) of the internal revenue code.

(18) Notwithstanding any other provision of this chapter to the contrary, for taxable years beginning before January first, two thousand twenty-one, the amount of increase in the federal deduction allowed

pursuant to any amendment to section 461(l) of the internal revenue code made after March first, two thousand twenty.

(c) Modifications reducing federal gross income. There shall be subtracted from federal gross income of the business the following items attributable to the business:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state or local income taxes under the laws of the United States;

(3) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of the city or this state authorizing the issuance of such obligations or securities but includible in gross income for federal income tax purposes;

(3-a) Fifty percent of dividends to the extent includible in gross income for federal income tax purposes and not subtracted under paragraph two or three of this subdivision, provided, however, that there shall be no subtraction pursuant to this paragraph for any portion of a dividend from stock with respect to which a dividend deduction would be disallowed by subsection (c) of section two hundred forty-six of the internal revenue code if the unincorporated business were a corporation;

(4) The amount of any refund or credit for overpayment of income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law, to the extent properly included in gross income for federal tax purposes;

(5) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, the difference between:

(a) the amount of gain included in federal gross income with respect to each such property, and

(b) the amount of gain, if smaller than the amount described in subparagraph (a) of this paragraph, that would be included in federal gross income with respect to each such property if the federal adjusted basis of such property on the date of the sale or other disposition had been equal to its fair market value on January first, nineteen hundred sixty-six, or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six; provided, however, that the total modification provided by this subparagraph shall not exceed the taxpayer's net gain from the sale or other disposition of all such property.

(6) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount properly includible in federal gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(7) Upon the disposition of property to which subdivision (o) of section 11-507 of this chapter applies, the amount, if any, by which the aggregate of the amounts described in subdivision (n) of section 11-507 of this chapter attributable to such property exceeds the aggregate of the amounts described in subdivision (o) of section 11-507 of this chapter attributable to such property.

(8) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain, to the extent includible in gross income for federal income tax purposes, realized from the holding, leasing or managing of real property if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(9) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain, to the extent includible in gross income for federal income tax purposes, including but not limited to, dividends, interest, payments with respect to securities loans, income from notional principal contracts, or income and gains, other than as a dealer, from the holding, sale, disposition, assumption, offset or termination of a position in, property, as defined in paragraph one of subdivision (c) of section 11-502 of this chapter, or other substantially similar income from ordinary and routine trading or investment activity to the extent determined by the commissioner of finance, realized in connection with activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(10) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, the amount of any income or gain, to the extent includible in gross income for federal income tax purposes, realized from the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such income or gain is attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(11) Notwithstanding any other provision of this chapter to the contrary, the amount of any income or gain, to the extent includible in gross income for federal income tax purposes, realized from the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(12) The amount of any grant received through either the COVID-19 pandemic small business recovery grant program, pursuant to section sixteen-ff of the New York state urban development corporation act, or the small business resilience grant program administered by the department of small business services, to the extent the amount of either such grant is included in federal taxable income.

(d) Upon the disposition of property to which subdivisions (t) and (u) of section 11-507 of this chapter apply, the amount of any gain or loss

includible in entire net income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

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

(B) Effective rate of tax. "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in such city, the maximum statutory rate of tax imposed by such city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

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

(2) Royalty expense add backs. (A) For the purpose of computing unincorporated business entire net income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this subdivision shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements: (I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid,

accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-503 of this chapter for the taxable year.

(iii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

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

(f) Upon the disposition of property to which subdivisions (w) and (x) of section 11-507 of this chapter apply, the amount of any gain or loss includible in unincorporated business gross income shall be adjusted to reflect the modifications provided in such subdivisions attributable to such property.

§ 11-507 Unincorporated business deductions. The unincorporated business deductions of an unincorporated business means the items of loss and deduction directly connected with or incurred in the conduct of the business, which are allowable for federal income tax purposes for the taxable year, including losses and deductions connected with any property employed in the business, with the following modifications:

(a) A deduction shall be allowed for charitable contributions of the unincorporated business, to the extent that such contributions would be deductible for federal income tax purposes if made by a corporation, but not in excess of five per centum of the amount by which the unincorporated business gross income exceeds the sum of (A) the unincorporated business deductions computed without the benefit of any deduction for charitable contributions and (B) the deduction allowed under subdivision

(b) of section 11-509 of this chapter, where the election permitted by such subdivision has been exercised.

(b) (1) A deduction shall be allowed for net operating losses incurred by the unincorporated business, except as otherwise provided by paragraph two of this subdivision, in an amount computed in the same manner as the net operating loss deduction which would be allowed for the taxable year for federal income tax purposes if the unincorporated business were an individual taxpayer, but determined solely by reference to the unincorporated business gross income and unincorporated business deductions, allocated to the city, of the unincorporated business; provided, however, that such net operating loss deduction which would be allowed for the taxable year for federal income tax purposes shall for purposes of this paragraph be determined as if the unincorporated business had elected under section one hundred seventy-two of the internal revenue code to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable years ending after June thirtieth, nineteen hundred eighty-nine. Such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-six and for the purposes of this paragraph a net operating loss shall be determined without regard to any deductions allowed pursuant to subdivision (b) of section 11-509 of this chapter and any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such internal revenue code as such section was in full force and effect on December thirty-first, nineteen hundred eighty.

(2) In the case of a partnership, no net operating loss carryback or carryover to any taxable year shall be allowed unless one or more of the partners during such taxable year were persons having a proportionate interest or interests, amounting to at least eighty percent of all such interests, in the unincorporated business gross income and unincorporated business deductions of the partnership which sustained the loss for which a carryback or carryover is claimed. In such event, the carryback or carryover allowable on account of such loss shall not exceed the percentage of the amount otherwise allowable, determined by dividing (A) the sum of the proportionate interests in the unincorporated business gross income and unincorporated business deductions of the partnership, for the year to which the loss is carried back or carried over, attributable to such partners, by (B) the sum of such proportionate interests owned by all partners for such taxable year. The amount by which the carryback or carryover otherwise allowable exceeds the amount allowable pursuant to the preceding sentence shall not be a carryback or carryover to any other taxable year.

(3) Notwithstanding any other provision of this chapter to the contrary, for taxable years beginning before January first, two thousand twenty-one, any amendment to section one hundred seventy-two of the internal revenue code made after March first, two thousand twenty shall not apply to this chapter.

(c) No deduction shall be allowed, except as provided in section 11-509 of this chapter for amounts paid or incurred to a proprietor or partner for services or for use of capital.

(d) No deduction shall be allowed for income taxes imposed by the city, this state or any other taxing jurisdiction, or the tax imposed by article thirteen-A of the tax law.

(e) No deduction shall be allowed for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter; (B) expenses paid or incurred for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; or (C) the amortizable bond premium on any bond the interest income from which is so exempt.

(f) No deduction shall be allowed in respect of the excess of net long-term capital gain over net short-term capital loss, but capital losses incurred in the unincorporated business shall be treated as ordinary losses and shall be allowed in full.

(g) In the case of a taxpayer who has exercised the election permitted by subdivision (b) of section 11-509 of this chapter, no deduction shall be allowed for expenditures with reference to the property to which such election relates, or for depreciation of such property, except as permitted by said subdivision.

(h) A deduction shall be allowed, to the extent not allowable for federal income tax purposes, for (A) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax; (B) ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of such income or the management, conservation or maintenance of property held for the production of such income; and (C) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax.

(i) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1) (A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste, as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law, from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source, as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law, from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) However, such deduction shall be allowed only (A) with respect to tangible property which is depreciable, pursuant to section one hundred

sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the state commissioner of environmental conservation or his or her designated representative, in the same manner as provided in either section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with the provision of the environmental conservation law, the sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(C) on condition that for the taxable year and all succeeding taxable years, no deduction for such expenditures or for depreciation of the same property allowed for federal income tax purposes shall be allowed under this chapter, except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subdivision, for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing unincorporated business deductions for the taxable year and all succeeding taxable years, and

(D) where the election provided for in subdivision (b) of section 11-509 of this chapter has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the public health law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-523 of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, such deduction shall be disregarded in computing gain or

loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss allowable for federal income tax purposes for such taxable year.

(j) In the case of mines, oil and gas wells and other natural deposits, no deduction of any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen A of the internal revenue code of nineteen hundred fifty-four, as amended, shall be allowed. However, an allowance for depletion with respect to such property shall be deductible in the amount which would be allowable under section six hundred eleven of such internal revenue code if such deduction were computed without reference to such section six hundred thirteen or section six hundred thirteen A of such code. With respect to the computation of depletion pursuant to this section, the basis for such computation for taxable years beginning in nineteen hundred seventy-two shall be the federal basis. For subsequent taxable years, the basis of such computation shall be reduced only by the deduction for the allowance for depletion deductible pursuant to this section. In any taxable year when any such property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing unincorporated business taxable income and there shall be added to or subtracted from federal gross income, so modified, the gain or loss upon such sale or other disposition. In computing such gain or loss, the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to this subdivision.

(k) A deduction shall be allowed for that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code.

(l) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, a deduction shall be allowed for any amount which the taxpayer could have excluded for purposes of this chapter had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(m) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, no deduction shall be allowed for any amount deductible for federal income tax purposes solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four.

(n) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, no deduction

shall be allowed for the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

(o) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been disallowed pursuant to subdivision (m) of this section, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(p) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the holding, leasing or managing of real property or to income or gain therefrom if, and to the extent that, such holding, leasing or managing of real property is not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(q) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for any expenses directly or indirectly attributable to activities described in paragraph two of subdivision (c) of section 11-502 of this chapter if, and to the extent that, such activities are not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(r) Notwithstanding any other provision of this chapter to the contrary, in the case of a taxpayer that is an unincorporated entity described in subparagraph (B) of paragraph four of subdivision (c) of section 11-502 of this chapter, no deduction shall be allowed for any losses or expenses directly or indirectly attributable to the sale or other disposition of an interest in another unincorporated entity if, and to the extent that, such losses or expenses are attributable to activities of such other unincorporated entity not deemed an unincorporated business carried on by the taxpayer pursuant to the provisions of subdivision (c) of section 11-502 of this chapter.

(s) Notwithstanding any other provision of this chapter to the contrary, no deduction shall be allowed for interest, depreciation or any other expense directly or indirectly attributable to the provision by an owner, lessee or fiduciary holding, leasing or managing real property of the service of parking, garaging or storing of motor vehicles on a monthly or longer term basis to tenants at such real property if, and to the extent that, the provision of such services to such tenants is not deemed an unincorporated business pursuant to the provisions of subdivision (d) of section 11-502 of this chapter.

(t) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the

internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, no deduction shall be allowed for the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(u) For taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, a deduction shall be allowed with respect to such property equal to the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of subdivision (w) of this section, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty-F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(v) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, no deduction shall be allowed for the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code.

(w) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, a deduction shall be allowed with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code equal to the amounts allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five.

§ 11-508 Allocation to the city. (a) General; allocation of business income. If an unincorporated business is carried on both within and without the city, as determined under regulations of the commissioner of finance, there shall be allocated to the city, in the manner provided in subdivision (b), (c) or (d) of this section, a fair and equitable portion of its business income. For taxable years beginning before July first, nineteen hundred ninety-six, if the unincorporated business has no regular place of business outside the city, all of such business income shall be allocated to the city.

(b) (1) Allocation by taxpayer's books. For taxable years beginning before January first, two thousand five, the portion allocable to the city may be determined from the books of the business if the methods used in keeping such books are approved by the commissioner of finance as fairly and equitably reflecting the income from the city.

(2)(i) If a taxpayer determines the portion of business income to be allocated to the city using the method prescribed in paragraph one of this subdivision on a timely filed original return with respect to each of the two taxable years, each of which must consist of twelve months, immediately preceding the taxpayer's first taxable year beginning on or after January first, two thousand five, the taxpayer may make a one-time election to continue to use that method for taxable years beginning on or after January first, two thousand five and before January first, two thousand twelve. Such election shall be made by using the method prescribed in paragraph one of this subdivision on an original timely filed return with respect to the first taxable year beginning on or after January first, two thousand five and before January first, two thousand six. Such election may not be made, or if made, shall be deemed revoked as of the beginning of the taxable year if, for either of the two taxable years immediately preceding the year in which the election is made, the commissioner of finance has determined the methods used in keeping such books do not fairly and equitably reflect the income from the city.

(ii) (A) A taxpayer that has made the election provided for in subparagraph (i) of this paragraph may revoke it by filing an original or amended return using an allocation method permitted by this section other than the method prescribed in paragraph one of this subdivision unless the commissioner of finance has determined that such method does not fairly and equitably reflect the income from the city.

(B) The election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year if, for any taxable year during which the election is intended to be in effect, the commissioner of finance has determined that the methods used in keeping the taxpayer's books do not fairly and equitably reflect the income from the city.

(C) In the case of a taxpayer that is a partnership or other unincorporated entity, the election provided for in subparagraph (i) of this paragraph shall be deemed to have been revoked as of the beginning of the taxable year unless one or more of the persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions for such taxable year were persons having a proportionate interest or interests, amounting to more than fifty percent of all such interests, in the taxpayer's unincorporated business gross income and unincorporated business deductions at the end of the taxpayer's last taxable year beginning before January first, two thousand five. For purposes of this clause, a transfer of an ownership interest in unincorporated business gross income or unincorporated business deductions upon the death of a partner or owner to such deceased partner's or owner's estate shall be disregarded but transfers by such decedent's estate shall not be disregarded.

(D) Once the election provided for in subparagraph (i) of this paragraph has been revoked by the taxpayer pursuant to clause (A) or deemed revoked pursuant to clauses (B) or (C) of this subparagraph, the taxpayer shall be barred from using the method prescribed in paragraph one of this subdivision for the taxable year in which the election has been revoked or deemed revoked and any subsequent taxable year.

(c) Allocation by formula. If subdivision (b) does not apply to the taxpayer, the portion allocable to the city shall be determined by multiplying (A) the business income by (B) a business allocation percentage to be determined by adding together the percentages computed

under paragraphs one, two and three of this subdivision, and dividing the result by the number of percentages; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, a taxpayer that is a "manufacturing business," as defined in subdivision (g) of this section, may determine its business allocation percentage as provided in such subdivision (g):

(1) Property percentage. The percentage computed by dividing (A) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the unincorporated business and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the unincorporated business and located both within and without the city. For this purpose, for taxable years beginning before January first, two thousand five, real property shall include real property rented to the unincorporated business and, for this purpose, for taxable years beginning on and after January first, two thousand five, real and tangible personal property shall include real and tangible personal property rented to the unincorporated business and the value of such real and tangible personal property rented to the unincorporated business shall mean the product of (i) eight and (ii) the gross rents payable for the rental of such property during the taxable year.

(2) Payroll percentage. The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the unincorporated business carried on both within and without the city.

(3) Gross income percentage. The percentage computed by dividing (A) the gross sales or charges for services performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices of the unincorporated business, or other agencies, situated within the city; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, sales of tangible personal property shall not be allocated to the city as provided in this paragraph, but shall be allocated to the city only where shipments are made to points within the city, and provided, further, that:

(A) for taxable years beginning on or after July first, two thousand five, for taxpayers having gross receipts for the taxable year, determined without regard to any deductions, of less than one hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city;

(B) for taxable years beginning on or after July first, two thousand six, for taxpayers having gross receipts for the taxable year, determined without regard to any deductions, of less than three hundred thousand dollars, charges for services performed shall be allocated to the city to the extent that the services are performed within the city; and

(C) for taxable years beginning on or after July first, two thousand seven, for all other taxpayers, charges for services performed shall be

allocated to the city to the extent that the services are performed within the city.

(d) Other allocation methods. The portion allocable to the city shall be determined in accordance with rules and regulations of the commissioner of finance if it shall appear to the commissioner of finance that the income from the city is not fairly and equitably reflected under the provisions of either subdivision (b) or subdivision (c) of this section.

(e) Special rules for real estate. Income and deductions from the rental of real property, and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivision (b), (c), or (d) of this section, but shall be considered as entirely derived from or connected with the state, other than this state, in which such property is located or, if such property is located in this state, the political subdivision thereof. To the extent that anything in this subdivision is inconsistent with any provision of subdivision (d) of section 11-502, subdivision (c) of section 11-506 or subdivision (p) of section 11-507 of this chapter, the provisions of such subdivisions shall take precedence over the provisions of this subdivision.

(e-1) Special rules for publishers and broadcasters. (1) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, there shall be allocated to the city, for purposes of such paragraph three, the gross sales or charges for services arising from sales of subscriptions to, and advertising contained in, such newspapers or periodicals, to the extent that such newspapers or periodicals are delivered to points within the city.

(2) Notwithstanding anything in paragraph three of subdivision (c) of this section to the contrary and except as provided in paragraph four of this subdivision, in the case of a taxpayer engaged in the business of broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of such paragraph three, a portion of the gross sales or charges for services arising from the sale of subscriptions to such programs or from the broadcasting of such programs and of commercial messages in connection therewith, such portion to be determined according to the number of listeners or viewers within and without the city.

(3) Notwithstanding anything in this section, other than subdivision (e) of this section, to the contrary, in the case of a taxpayer that is substantially engaged, in the aggregate, in any combination of the businesses referred to in paragraphs one, two and four of this subdivision, the portion of business income allocable to the city shall be determined in accordance with the provisions of subdivision (c) of this section, as modified by paragraphs one, two and four of this subdivision, unless the commissioner of finance determines that the business income from the city is not fairly and equitably reflected under the provisions of such subdivision (c), in which event the provisions of subdivision (d) of this section shall apply in determining the portion of business income allocable to the city and the provisions of subdivision (b) of this section shall not apply. For purposes of this subdivision, a taxpayer shall be deemed to be substantially engaged in a business or businesses referred to in such paragraphs one and two if more than ten percent of the taxpayer's gross receipts for the taxable year are attributable to such business or businesses.

(4) Notwithstanding anything in paragraph one or two of this subdivision to the contrary, for taxable years beginning on or after January first, two thousand two, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of paragraph three of subdivision (c) of this section, the gross sales or charges to subscribers located in the city for subscriptions to such newspapers, periodicals, or program services. For purposes of this paragraph, a subscriber shall be deemed located in the city if, in the case of newspapers and periodicals, the mailing address for the subscription is within the city and, in the case of program services, the billing address for the subscription is within the city. For purposes of this clause, "subscriber" shall mean a member of the general public who receives such newspapers, periodicals or program services and does not further distribute them.

(e-2) Rules for receipts from certain services to investment companies. (1) For taxable years beginning on or after January first, two thousand one, for purposes of paragraph three of subdivision (c) of this section, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with paragraph two of this subdivision shall be deemed to arise from services performed within the city, such portion referred to herein as the Staten Island city portion.

(2) The Staten Island city portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction is the sum of the monthly percentages, as defined hereinafter, determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer, but excluding any month during which the investment company had no outstanding shares. The monthly percentage for each such month is determined by dividing the number of shares in the investment company which are owned on the last day of the month by shareholders that are domiciled in the city by the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3)(A) For purposes of this subdivision the term "domicile", in the case of an individual shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of the code of the proceeding municipality; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(B) For purposes of this subdivision, the term "investment company" means a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, and a partnership to which subdivision (a) of section seven thousand seven hundred four of the internal revenue code applies, by virtue of paragraph three of subdivision (c) of section seven thousand seven hundred four of such code, and that meets the requirements of subdivision (b) of section

eight hundred fifty-one of such code. The provisions of this subparagraph shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(C) For purposes of this subdivision, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company in their capacity as such.

(D) For purposes of this subdivision, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to subdivision (a) of section fifteen of the federal investment company act of nineteen hundred forty, as amended.

(E) For purposes of this subdivision, the term "distribution services" means the services of advertising, servicing investor accounts, including redemptions, marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts, including redemptions, or marketing shares, only where such service is performed by a person who is, or was, in the case of a closed end company, also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to subdivision (b) of section fifteen of the federal investment company act of nineteen hundred forty, as amended.

(F) For purposes of this subdivision, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined in this subdivision, to such investment company.

(e-3) Rules for receipts for services performed by registered securities or commodities brokers or dealers. (1) For taxable years beginning after two thousand eight, in the case of a taxpayer which is a registered securities or commodities broker or dealer, for purposes of paragraph three of subdivision (c) of this section, the receipts specified in subparagraphs (A) through (G) of this paragraph shall be deemed to arise from services performed within the city to the extent set forth in such subparagraphs.

(A) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions.

(B) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest.

(C) Gross income, including any accrued interest or dividends, from principal transactions for the purchase or sale of stocks, bonds, foreign exchange and other securities or commodities, including futures and forward contracts, options and other types of securities or commod-

ities derivatives contracts, shall be deemed to arise from services performed within the city either (i) to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of such principal transactions or (ii) if the taxpayer so elects, to the extent that the gross proceeds from such principal transactions, determined without deduction for any cost incurred by the taxpayer to acquire the securities or commodities, are generated from sales of securities or commodities to customers within the city based upon the mailing addresses of such customers in the records of the taxpayer. For purposes of clause (ii) of this subparagraph, the taxpayer shall separately calculate such gross income from principal transactions by type of security or commodity. For purposes of this subparagraph, gross income from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities. For purposes of this subdivision, the term "production credits" means credits granted pursuant to the internal accounting system used by the taxpayer to measure the amount of revenue that should be awarded to a particular branch or office or employee of the taxpayer which is based, at least in part, on the branch's, the office's or the employee's particular activities. Upon request, the taxpayer shall be required to furnish a detailed explanation of such internal accounting system to the department.

(D) (i) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer, such customer being the entity which is contemplating issuing or is issuing securities, or fees earned by the taxpayer for managing an underwriting shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees.

(ii) Receipts constituting the primary spread or selling concession from underwritten securities shall be deemed to arise from services performed within the city to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of the sale of the underwritten securities.

(iii) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(E) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to an entity affiliated with the taxpayer shall be deemed to arise from services performed at the principal place of business of such affiliated entity. For purposes of this subparagraph, an entity shall be considered affiliated with the taxpayer if such entity and the taxpayer have eighty percent or more common direct or indirect, actual or beneficial ownership.

(F) Receipts constituting account maintenance fees shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such account maintenance fees.

(G) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, but excluding fees paid for services described in paragraph one of subdivision (e-2) of this section, shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees.

(2) For purposes of this subdivision, the term "securities" shall have the same meaning as in paragraph two of subdivision (c) of section four hundred seventy-five of the internal revenue code and the term "commodities" shall have the same meaning as in paragraph two of subdivision (e) of section four hundred seventy-five of such code. The term "registered securities or commodities broker or dealer" means a broker or dealer registered as such by the securities and exchange commission or the commodities futures trading commission, and shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at title seventeen, part two hundred forty, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

(3) If the taxpayer receives any of the receipts enumerated in paragraph one of this subdivision as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the subparagraphs in paragraph one of this subdivision. The amount of such receipts shall exclude the amount the taxpayer is required to pay to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in paragraph one of this subdivision as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the subparagraphs in paragraph one of this subdivision.

(4) If, for purposes of subparagraph (A), (B), (F), or (G) of paragraph one of this subdivision, and clause (i) of subparagraph (C) of paragraph one of this subdivision, the taxpayer is unable from its records to determine the mailing address of the customer, the receipts described in any of such subparagraphs and such clause shall be deemed to arise from services performed at the branch or office of the taxpayer that generates the transaction for the customer that generated such receipts.

(f) Allocation of investment income. (1) The investment income of an unincorporated business shall be allocated to the city by multiplying such investment income by an investment allocation percentage to be determined as follows:

(A) multiply the amount of its investment capital invested in each stock, bond or other security, other than governmental securities, during the period covered by its return by the issuer's allocation percentage, determined as provided in paragraph two of this subdivision, of the issuer or obligor thereof:

(B) add together the products so obtained; and

(C) divide the sum so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities;

provided, however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the return, only such portion of such capital shall be taken

into account; and provided, further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts shall be allocated in the manner provided in subdivision (b), (c) or (d) of this section.

(2) (A) In the case of an issuer or obligor subject to tax under subchapter two or three-A of chapter six of this title, or subject to tax as a utility corporation under chapter eleven of this title, the issuer's allocation percentage shall be the percentage of the appropriate measure which is required to be allocated within the city on the report or reports, if any, required of the issuer or obligor under chapter six or eleven of this title for the preceding year. The appropriate measure referred to in this subparagraph shall be: in the case of an issuer or obligor subject to subchapter two of chapter six of this title, entire capital; and in the case of an issuer or obligor subject to chapter eleven of this title as a utility corporation, gross income.

(B) In the case of an issuer or obligor subject to tax under part four of subchapter three of chapter six of this title, the issuer's allocation percentage shall be determined as follows:

(i) In the case of a banking corporation described in paragraphs one through eight of subdivision (a) of section 11-640 of this title which is organized under the laws of the United States, this state or any other state of the United States, the issuer's allocation percentage shall be its alternative entire net income allocation percentage, as defined in subdivision (c) of section 11-642 of this title, for the preceding year. In the case of such a banking corporation whose alternative entire net income for the preceding year is derived exclusively from business carried on within the city, its issuer's allocation percentage shall be one hundred percent.

(ii) In the case of a banking corporation described in paragraph two of subdivision (a) of section 11-640 of this title which is organized under the laws of a country other than the United States, the issuer's allocation percentage shall be determined by dividing (I) the amount described in clause (i) of subparagraph (A) of paragraph two of subdivision (a) of section 11-642 of this title with respect to such issuer or obligor for the preceding year, by (II) the gross income of such issuer or obligor from all sources within and without the United States, for such preceding year, whether or not included in alternative entire net income for such year.

(iii) In the case of an issuer or obligor described in paragraph nine of subdivision (a) or in paragraph two of subdivision (d) of section 11-640 of this title, the issuer's allocation percentage shall be determined by dividing the portion of the entire capital of the issuer or obligor allocable to the city for the preceding year by the entire capital, wherever located, of the issuer or obligor for the preceding year.

(C) Provided, however, that if a report or reports for the preceding year are not filed, or if filed do not contain information which would permit the determination of such issuer's allocation percentage, then the issuer's allocation percentage to be used shall, at the discretion of the commissioner of finance, be either (i) the issuer's allocation percentage derived from the most recently filed report or reports of the issuer or obligor or (ii) a percentage calculated, by the commissioner of finance, reasonably to indicate the degree of economic presence in the city of the issuer or obligor during the preceding year.

(3) For purposes of this subdivision, investment capital shall be determined by taking the average value of the gross assets included therein, less liabilities deductible therefrom pursuant to the

provisions of subdivision (h) of section 11-501 of this chapter. The value of investment capital which consists of marketable securities shall be the fair market value thereof and the value of investment capital other than marketable securities shall be the value thereof shown on the books and records of the unincorporated business in accordance with generally accepted accounting principles.

(g) Special rules for manufacturing businesses. (1) For taxable years beginning on or after July first, nineteen hundred ninety-six and before January first, two thousand eleven, a manufacturing business may elect to determine its business allocation percentage by adding together the percentages determined under paragraphs one, two and three of subdivision (c) of this section and an additional percentage equal to the percentage determined under paragraph three of subdivision (c) of this section, and dividing the result by the number of percentages so added together.

(2) An election under this subdivision must be made on a timely filed (determined with regard to extensions granted) original return for the taxable year. Once made for a taxable year, such election shall be irrevocable for that taxable year. A separate election must be made for each taxable year. A manufacturing business that has failed to make an election as provided in this paragraph shall be required to determine its business allocation percentage without regard to the provisions of this subdivision. Notwithstanding anything in this paragraph to the contrary, the commissioner of finance may permit a manufacturing business to make or revoke an election under this subdivision, upon such terms and conditions as the commissioner may prescribe, where the commissioner determines that such permission should be granted in the interests of fairness and equity due to a change in circumstances resulting from an audit adjustment.

(3) As used in this subdivision, the term "manufacturing business" means an unincorporated business primarily engaged in the manufacturing and sale thereof of tangible personal property; and the term "manufacturing" includes the process, including the assembly process (i) of working raw materials into wares suitable for use or (ii) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. An unincorporated business shall be deemed to be primarily engaged in the activities described in the preceding sentence if more than fifty percent of its gross receipts for the taxable year are attributable to such activities.

(h) Notwithstanding subdivision (d) of this section, if it shall appear to the commissioner of finance that any business or investment allocation percentage determined pursuant to this section does not properly reflect the activity, business, or income of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion, in the case of a business allocation percentage, to adjust it by (1) excluding one or more of the factors therein; (2) including one or more factors, such as expenses, purchases, contract values, minus subcontract values; (3) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining unincorporated business entire net income, or (4) any other similar or different method calculated to effect a fair and proper allocation of the income reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage; provided the income therefrom is also excluded in determining unincorporated business entire

net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

(i) Notwithstanding subdivision (c) of this section, but subject to subdivision (g) of this section, the business allocation percentage shall be computed in the manner set forth in this subdivision.

(1) For taxable years beginning in two thousand nine, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of thirty percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of thirty percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of forty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(2) For taxable years beginning in two thousand ten, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of twenty-seven percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty-seven percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of forty-six percent and the percentage determined under paragraph three of subdivision (c) of this section.

(3) For taxable years beginning in two thousand eleven, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of twenty-three and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty-three and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of fifty-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(4) For taxable years beginning in two thousand twelve, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of twenty percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of twenty percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of sixty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(5) For taxable years beginning in two thousand thirteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of sixteen and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of sixteen and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of sixty-seven percent and the percentage determined under paragraph three of subdivision (c) of this section.

(6) For taxable years beginning in two thousand fourteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of thirteen and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of thirteen and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of seventy-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(7) For taxable years beginning in two thousand fifteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of ten percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of ten percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of eighty percent and the percentage determined under paragraph three of subdivision (c) of this section.

(8) For taxable years beginning in two thousand sixteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of six and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of six and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of eighty-seven percent and the percentage determined under paragraph three of subdivision (c) of this section.

(9) For taxable years beginning in two thousand seventeen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of three and one-half percent and the percentage determined under paragraph one of subdivision (c) of this section,

(B) the product of three and one-half percent and the percentage determined under paragraph two of subdivision (c) of this section, and

(C) the product of ninety-three percent and the percentage determined under paragraph three of subdivision (c) of this section.

(10) For taxable years beginning after two thousand seventeen, the business allocation percentage shall be the percentage determined under paragraph three of subdivision (c) of this section.

(11) The commissioner shall promulgate rules necessary to implement the provisions of this subdivision under such circumstances where any of the percentages to be determined under paragraph one, two or three of subdivision (c) of this section cannot be determined because the taxpayer has no property, payroll or gross receipts from sales or services within or without the city.

§ 11-509 Deductions not subject to allocation. (a) In computing unincorporated business taxable income, there shall be allowed, without allocation under section 11-508 of this chapter, deductions for reasonable compensation for taxable years beginning before January first, two thousand seven, not in excess of five thousand dollars, and for taxable years beginning on or after January first, two thousand seven, not in excess of ten thousand dollars, for personal services of the proprietor and each partner actively engaged in the unincorporated business, but the aggregate of such deductions shall not exceed twenty per centum of the unincorporated business taxable income computed without the benefit of any deductions under this subdivision or the unincorporated business exemptions under section 11-510 of this chapter.

(b) Subject to the conditions provided in paragraphs three and four of this subdivision at the election of the taxpayer there shall also be

allowed, without allocation under section 11-508 of this chapter, either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of the items shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in paragraphs three or four of this subdivision, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that no deduction shall be allowed pursuant to section 11-507 of this chapter for depreciation of the same property, and the total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property shall not exceed its cost or other basis and, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such total shall not exceed its cost or other basis multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income over its unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, which is used or to be used for purposes of research or development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that, in the case of an unincorporated business carried on both within and without this city, with respect to property described in paragraph four of this subdivision, such deduction does not exceed the expenditures multiplied by (A) the percentage of the excess of the taxpayer's unincorporated business gross income over its unincorporated business deductions allocated to this city, or (B) the percentage of the taxpayer's business income allocated to this city, whichever is applicable, which percentage shall be determined under section 11-508 of this chapter for the first year such depreciation is deducted, and that, for the taxable year and all succeeding taxable years, no deduction shall be allowed pursuant to section 11-507 of this chapter on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowable for federal income tax purposes on account of such expenditures or on account of depreciation of the same property shall be proportionately reduced in determining the deductions allowable pursuant to section 11-507 of this chapter for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, the deduction allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a deduction shall have been allowed pursuant to this paragraph for all or part of

such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in the taxpayer's return for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section 11-523 of this chapter.

(3) For purposes of this paragraph, such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditure relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after December thirty-first, nineteen hundred sixty-five or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under subparagraph (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation, provided, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leas-

ing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one of this subdivision may be taken in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's trade or business, (A) the construction, reconstruction, or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five. Provided, however, a deduction under paragraph one of this subdivision shall be allowed with respect to property described in this paragraph only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing, provided, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subdivision (i) of section 11-507 of this chapter may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing, in which event, a deduction shall not be allowed under subdivision (i) of section 11-507 of this chapter. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation, provided, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a deduction under paragraph one shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the deductions allowable for any taxable year pursuant to this subdivision exceed the taxpayer's unincorporated business taxable income, determined without the allowance of such deductions, the excess may be carried over to the following taxable year or years and may be

deducted, without allocation under section 11-508 of this chapter, in computing unincorporated business taxable income for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the deductions so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal gross income the amount of the difference between such adjusted bases.

§ 11-510 Unincorporated business exemptions. In computing unincorporated business taxable income, there shall be allowed, without allocation under section 11-508 of this chapter:

(a) an unincorporated business exemption of five thousand dollars, prorated for taxable years of less than twelve months under regulations of the commissioner of finance;

(b) if a partner in an unincorporated business is taxable under this chapter or under any local law imposed pursuant to section one of chapter seven hundred seventy-two of the laws of nineteen hundred sixty-six, an exemption for the amount of the partner's proportionate interest in the excess of the unincorporated business gross income over the deductions allowed under sections 11-507 and 11-509 of this chapter, but this exemption shall be limited to the amount which is included in the partner's unincorporated business taxable income allocable to the city, or included in a corporate partner's net income allocable to the city, provided, however, no such exemption shall be allowed to an unincorporated business for any taxable year of the unincorporated business beginning after June thirtieth, nineteen hundred ninety-four.

§ 11-511 Declarations of estimated tax. (a) Requirement of declaration. Except as provided in subdivision (j) of this section, every unincorporated business shall make a declaration of its estimated tax for the taxable year, containing such information as the commissioner of finance may prescribe by regulations or instruction, if: (1) for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed fifteen thousand dollars; (2) for taxable years beginning in nineteen hundred ninety-six, its unincorporated business taxable income can reasonably be expected to exceed twenty thousand dollars; (3) for taxable years beginning after nineteen hundred ninety-six but before two thousand nine, its estimated tax can reasonably be expected to exceed one thousand eight hundred dollars; and (4) for taxable years beginning after two thousand eight, its estimated tax can reasonably be expected to exceed three thousand four hundred dollars.

(b) Definition of estimated tax. The term "estimated tax" means the amount which an unincorporated business estimates to be its tax under this chapter for the taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision (c) of section 11-503 of this chapter.

(c) Time for filing declaration. Except as hereinafter provided, a declaration of estimated tax required under this section shall be filed on or before April fifteenth of the taxable year provided, however, that if the requirements of subdivision (a) of this section are first met:

(1) after April first and before June second of the taxable year, the declaration shall be filed on or before June fifteenth, or

(2) after June first and before September second of the taxable year, the declaration shall be filed on or before September fifteenth, or

(3) after September first of the taxable year, the declaration shall be filed on or before January fifteenth of the succeeding year.

(d) Filing of declarations on or before January fifteenth.

(1) A declaration of estimated tax by an unincorporated business having an estimated unincorporated business taxable income from farming, including oyster farming, for the taxable year which is at least two-thirds of its total estimated unincorporated business taxable income for the taxable year may be filed at any time on or before January fifteenth of the succeeding year.

(2) For taxable years beginning before nineteen hundred ninety-seven, a declaration of estimated tax under this section of forty dollars or less for the taxable year may be filed at any time on or before January fifteenth of the succeeding year under regulations of the commissioner of finance.

(e) Amendments of declaration. An unincorporated business may amend a declaration under regulations of the commissioner of finance.

(f) Return as declaration or amendment. If on or before February fifteenth of the succeeding taxable year an unincorporated business subject to the estimated tax requirements of this section files its return for the taxable year for which the declaration is required, and pays on or before such date the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year, but is otherwise required to be filed on or before January fifteenth of the succeeding year, and

(2) such return shall be considered as the amendment permitted by subdivision (e) of this section to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

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

(h) Short taxable year. An unincorporated business subject to the estimated tax requirements of this section and having a taxable year of less than twelve months shall make a declaration in accordance with regulations of the commissioner of finance.

(i) Declaration of unincorporated business under a disability. The declaration of estimated tax for an unincorporated business which is unable to make a declaration for any reason shall be made and filed by the committee, fiduciary or other person charged with the care of the property of such unincorporated business, other than a receiver in possession of only a part of such property, or by his or her duly authorized agent.

(j) Declaration of estimated tax for taxable years beginning prior to July thirteenth, nineteen hundred sixty-six. Notwithstanding subdivision (c) of this section, no declaration of estimated tax required by subdivision (a) of this section need be filed until September twelfth, nineteen hundred sixty-six.

§ 11-512 Payments of estimated tax. (a) General. The estimated tax with respect to which a declaration is required shall be paid as follows:

(1) If the declaration is filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second, third and fourth installments shall be

paid on the following June fifteenth, September fifteenth, and January fifteenth, respectively.

(2) If the declaration is filed after April fifteenth and not after June fifteenth of the taxable year, and is not required to be filed on or before April fifteenth of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second and third installments shall be paid on the following September fifteenth and January fifteenth, respectively.

(3) If the declaration is filed after June fifteenth and not after September fifteenth of the taxable year, and is not required to be filed on or before June fifteenth of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second shall be paid on the following January fifteenth.

(4) If the declaration is filed after September fifteenth of the taxable year, and is not required to be filed on or before September fifteenth of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two, three and four of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(b) Amendments of declaration. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(c) Application to short taxable year. This section shall apply to a taxable year of less than twelve months in accordance with regulations of the commissioner of finance.

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

(e) Installments paid in advance. An unincorporated business may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

(f) Cross reference. For unincorporated businesses with taxable years beginning prior to July thirteenth, nineteen hundred sixty-six, see subdivision (j) of section 11-511 of this chapter.

(g) Taxpayers with credit relating to stock transfer tax. The portion of an overpayment attributable to a credit allowable pursuant to subdivision (c) of section 11-503 of this chapter may not be credited against any payment due under this section.

§ 11-513 Accounting periods and methods. (a) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, unincorporated business taxable income

shall be computed under such method as in the opinion of the commissioner of finance clearly reflects income.

(c) Change of accounting period or method. (1) If a taxpayer's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, beginning after January first, nineteen hundred sixty-six, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year, which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the commissioner of finance.

§ 11-514 Returns, payment of tax. (a) General. An unincorporated business income tax return shall be made and filed, and the balance of any tax shown on the face of such return, not previously paid as installments of estimated tax, shall be paid, on or before the fifteenth day of the fourth month following the close of a taxable year, except that in the case of an unincorporated business classified as a partnership for federal income tax purposes, such return shall be made and filed and such balance shall be paid on or before the fifteenth day of the third month following the close of a taxable year for taxable years beginning on or after January first, two thousand sixteen, by or for every:

(1) unincorporated business, for taxable years beginning after nineteen hundred eighty-six but before nineteen hundred ninety-seven, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ten thousand dollars, or having any amount of unincorporated business taxable income;

(2) partnership, for taxable years beginning after nineteen hundred ninety-six, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than twenty-five thousand dollars, or having unincorporated business taxable income of more than fifteen thousand dollars;

(3) unincorporated business other than a partnership, for taxable years beginning after nineteen hundred ninety-six, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than seventy-five thousand dollars, or having unincorporated business taxable income of more than thirty-five thousand dollars; and

(4) unincorporated business, for taxable years beginning after two thousand eight, having unincorporated business gross income, determined for purposes of this subdivision without any deduction for the cost of goods sold or services performed, of more than ninety-five thousand dollars.

(b) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by such individual's guardian, committee, fiduciary or other person charged with the care of his or her person or property, other than a receiver in possession of only a part of his or her property, or by such individual's duly authorized agent.

(d) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Returns for taxable years ending prior to December thirty-first, nineteen hundred sixty-six. With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the fourth month following the close of such taxable year or September twelfth, nineteen hundred sixty-six, whichever is later.

(g) Taxpayers with credit relating to stock transfer tax. Subdivision (a) of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision (c) of section 11-503 of this chapter, except that the tax, or balance thereof, payable to the commissioner of finance in full pursuant to subdivision (a) of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision (c) of section 11-503 of this chapter were not allowed.

§ 11-515 Time and place for filing returns and paying tax. A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner of finance on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return. The commissioner of finance shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for payment of any tax.

§ 11-516 Signing of returns and other documents. (a) General. Any return, declaration, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the commissioner of finance. The fact that an individual's name is signed to a return, declaration, statement, or other document, shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall

constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 11-517 Extensions of time. (a) General. The commissioner of finance may grant a reasonable extension of time for payment of tax or estimated tax, or any installment, or for filing any return, declaration, statement, or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States, no such extension for filing any return, declaration, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the commissioner of finance may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted, on such terms and conditions as the commissioner of finance may require.

§ 11-518 Requirements concerning returns, notices, records and statements. (a) General. The commissioner of finance may prescribe regulations as to the keeping of records, the content and forms of returns and statements, and the filing of copies of federal income tax returns and determinations. The commissioner of finance may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the commissioner of finance may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualification as such to the commissioner of finance, as may be required by regulation.

§ 11-519 Report of change in federal or New York state taxable income. If the amount of a taxpayer's federal or New York state taxable income reported on his or her federal or New York state income tax for any taxable year is changed or corrected by the United States internal revenue service or the New York state tax commission or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or the state of New York, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, pursuant to subsection (f) of section six hundred eighty-one of the tax law, executes a notice or waiver of the restrictions provided in subsection (c) of such section of the tax law, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver, or as otherwise required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income tax return shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner of finance may require. The commissioner of finance may by regulation prescribe such exceptions to the requirements of this section as the commissioner deems appropriate.

§ 11-519.1 Report of change of state sales and compensating use tax liability. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 11-520 Change of election. Any election expressly authorized by this chapter, other than the election authorized by section 11-506 of this chapter, may be changed on such terms and conditions as the commissioner of finance may prescribe by regulation.

§ 11-521 Notice of deficiency. (a) General. If upon examination of a taxpayer's return under this chapter the commissioner of finance determines that there is a deficiency of income tax, the commissioner may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this chapter, the commissioner of finance is authorized to estimate the taxpayer's city unincorporated business taxable income and tax thereon, from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, such notice shall be an assessment of the amount of tax specified therein, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax appeals tribunal a petition under section 11-529 of this chapter. If the notice of deficiency or conciliation decision is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-534 of this chapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition with the tax appeals tribunal contesting such notice, nor, if a petition with respect to the taxable year has been both served upon the commissioner of finance and filed with the tax appeals tribunal, until the decision of the tax appeals tribunal has become final. For exception in

the case of judicial review of the decision of the tax appeals tribunal, see subdivision (c) of section 11-530 of this chapter.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return, including an overstatement of the amount paid as estimated tax, the commissioner of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed.

Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision (b) of section 11-529 of this chapter, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or collection be prohibited by the provisions of subdivision (c) of this section.

(e) Exception where change in federal or New York state taxable income is not reported.

(1) If the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver described in such section, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected federal or New York state taxable income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision (b) of section 11-529 of this chapter, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, unless the commissioner of finance has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time, whether or not a notice of deficiency has been issued, have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the commissioner of finance.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (i) the amount shown as the tax upon the taxpayer's return, whether the return was made

or the tax computed by the taxpayer or by the commissioner of finance, and less, (ii) the amounts previously assessed, or collected without assessment, as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment, whether or not erroneous, made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

(h) Exception where change or correction of sales and compensating use tax liability is not reported. (1) If a taxpayer fails to comply with section 11-519.1 of this chapter in not reporting a change or correction of his or her sales and compensating use tax liability or in not filing a copy of an amended return or report relating to his or her sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision (b) of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under this chapter by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing where such state determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-527 of this chapter, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision (b) of section 11-529 of this chapter, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, and such notice shall be sufficient for purposes of this chapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

§ 11-522 Assessment. (a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return, including any amended return showing an increase of tax. In the case of a return properly filed without computation of tax, the tax computed by the commissioner of finance shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-521 of this chapter if no petition is both served on the commissioner of finance and filed with the tax appeals tribunal, or if a petition is filed, then upon the date when a decision of the tax appeals tribunal establishing the amount of the deficiency becomes final.

If an amended return or report filed pursuant to section 11-519 of this chapter concedes the accuracy of a federal or New York state

adjustment, change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-523 of this chapter.

If a report or amended return or report filed pursuant to section 11-519.1 of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under this chapter resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section 11-523 of this chapter.

If a notice of additional tax due, as prescribed in subdivision (e) of section 11-521 of this chapter has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-519 of this chapter is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

If a notice of additional tax due, as prescribed in subdivision (h) of section 11-521 of this chapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by section 11-519.1 of this chapter, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter, including interest, additions to tax and assessable penalties, is not otherwise provided for, the commissioner of finance may establish the same by regulations.

(c) Estimated income tax. No unpaid amount of estimated tax under section one hundred sixteen shall be assessed.

(d) Supplemental assessment. The commissioner of finance may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-521 of this chapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross-reference. For assessment in case of jeopardy, see section 11-534 of this chapter.

§ 11-523 Limitations on assessment. (a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed.

(b) Time return deemed filed. For purposes of this section a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(c) Exceptions. (1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax,

(C) the taxpayer fails to comply with section 11-519 of this chapter in not reporting a change or correction increasing or decreasing the taxpayer's federal or New York state taxable income as reported on the taxpayer's federal or New York state income tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or in not filing an amended return, or

(D) the taxpayer fails to file a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal or New York state income. If the taxpayer shall, pursuant to section 11-519 of this chapter, report a change or correction or file an amended return increasing or decreasing federal or New York state taxable income or report the execution of a notice of waiver and the changes and corrections on which it is based, or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment, if not deemed to have been made upon the filing of the report or amended return, may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal or New York state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback. If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment. If a return is required for a decedent or for his or her estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor, made after the return is filed, by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d) of this section.

(7) Report on use of certain property. Under the circumstances described in paragraph two of subdivision (b) of section 11-509 of this chapter, the tax may be assessed within three years after the filing of

a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility. Under the circumstances described in paragraph (i) of section 11-507 of this chapter, the tax may be assessed within three years after the filing of the return containing the information required by such paragraph.

(9) Report of changed or corrected sales and compensating use tax liability. If the taxpayer files a report or amended return or report required under section 11-519.1 of this chapter, in respect of a change or correction of sales and compensating use tax liability, the assessment, if not deemed to have been made upon the filing of the report, may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Omission of income on return. The tax may be assessed at any time within six years after the return was filed if (1) a taxpayer omits from his or her city unincorporated business gross income an amount properly includible therein which is in excess of twenty-five per centum of the amount of city unincorporated business gross income stated in the return, or (2) an estate or trust omits income from its return in an amount in excess of twenty-five percent of its income determined as if it were an individual.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of finance of the nature and amount of such item.

(e) Suspension of running of period of limitation. The running of the period of limitations on assessment or collection of tax or other amount, or of a transferee's liability, shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision (c) of section 11-521 of this chapter from making the assessment or from collecting by levy.

§ 11-524 Interest on underpayment. (a) General. If any amount of tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax under section 11-512 of this chapter.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter, including any extension of time, and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner of finance for payment

of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(e) Tax reduced by carryback. If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section 11-532 of this chapter, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-532 of this chapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(i) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(j) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(k) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 11-525 Additions to tax and civil penalties. (a) (1) Failure to file tax return. (A) In case of failure to file a tax return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a tax return within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including an assessment made pursuant to subdivision (a) of section 11-522 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one,

which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence. (1) If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations hereunder, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of section 11-524 with respect to the portion of the deficiency described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such deficiency, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in unincorporated business gross income, as that term is defined in section 11-506, any portion of a deficiency attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any addition to tax is imposed under this subdivision by reason of this paragraph, the amount of the addition to tax imposed by paragraph one of this subdivision shall be five percent of the portion of the deficiency which is attributable to the failure described in this paragraph.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year, or if no return was filed, ninety percent of the tax for such year, over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death. In any case in which there would be no underpayment if this subdivision were applied by substituting "eighty percent" for "ninety percent" where it appears in this subdivision, the addition to tax under this subdivision shall be equal to seventy-five percent of the amount otherwise determined under this subdivision.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subdivision (c) of this section with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date

prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(A) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the unincorporated business taxable income shall be placed on an annualized basis by:

(i) multiplying by twelve, or, in the case of a taxable year of less than twelve months, the number of months in the taxable year, the unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid, and

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, or

(D)(i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner:

(I) take the unincorporated business taxable income for all months during the taxable year preceding the filing month,

(II) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(III) determine the tax on the amounts determined under subclause (II) of this clause, and

(IV) multiply the tax determined under subclause (III) of this clause by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of clause (i) of this subparagraph:

(I) the base period percentage for any period of months shall be the average percent which the unincorporated business taxable income for the corresponding months in each of the three preceding years bears to the unincorporated business taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of new unincorporated businesses and other similar circumstances, and

(II) the term "filing month" means the month in which the installment is required to be paid;

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual unincorporated business taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e)(1) Except as provided in paragraph two of this subdivision, subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall not apply in the case of any taxpayer which had unincorpo-

rated business taxable income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(2) The amount treated as the estimated tax under subparagraphs (A) and (B) of paragraph one of subdivision (d) of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

(f) Deficiency due to fraud. (1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to two times of the deficiency.

(2) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (a) or (b) of this section.

(g) Additional penalty. Any taxpayer who with fraudulent intent shall fail to pay any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this chapter shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-521, this subdivision shall not apply to:

(1) any addition to tax under subdivision (a) of this section except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c) of this section; and

(3) any additional penalties under subdivisions (g) and (k) of this section.

(i) Determination of deficiency. For purposes of subdivisions (b) and (c) of this section, the amounts shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(j) Substantial understatement of liability. If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or five thousand dollars. For purposes of the this subdivision, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return, reduced by any rebate, within the meaning of subdivision (g) of section 11-521 of this chapter. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts

affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(k) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph one of this subdivision, the term "procures" includes ordering, or otherwise causing, a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person, whether or not a member, employee, or agent of the taxpayer involved, over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph one of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

(l) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department shall be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. Such penalty shall be in addition to any other penalty or addition provided by law.

§ 11-526 Overpayment. (a) General. The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this title, on the person who made overpayment, and the balance shall be refunded. Such credit of an overpayment shall be applied before such overpayment, or any portion thereof, is paid to the state commissioner of taxation and finance pursuant to section one hundred seventy-one-m of the tax law.

(b) Credits against estimated tax. The commissioner of finance may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax for the succeeding taxable year, whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(c) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

(d) Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(e) Notwithstanding any provision of law in article fifty-two of the civil practice law and rules to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of the department of finance, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

§ 11-527 Limitation on credit or refund. (a) General. Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (c) of section 11-523 of this chapter, extending the period for assessment of income tax, is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund the period for filing a claim for credit or refund, or for making credit or refund if no claims filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) Notice of change or correction of federal or New York state taxable income. If a taxpayer is required by section 11-519 of this chapter to report a change or correction in federal or New York state taxable income reported on the taxpayer's federal or New York state income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, or to file an amended return with the commissioner of finance, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of finance. If the report or amended return required by section 11-519 of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any

claim for credit or refund of the overpayment attributable to the federal or New York state change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal or New York state change, correction or items amended on the taxpayer's amended federal or New York state income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback. A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due for the taxable year of the loss, or within the period prescribed in subdivision (b) of this section in respect of such taxable year, or within the period prescribed in subdivision (c) of this section, where applicable in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section 11-530 of this chapter after the expiration of the applicable period of limitation specified in this chapter unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(f) Effect of petition to tax appeals tribunal. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-521 of this chapter and if the taxpayer files a timely petition with the tax appeals tribunal under section 11-529 of this chapter, the tax appeals tribunal may determine that the taxpayer has made an overpayment for such year, whether or not it also determines a deficiency for such year. No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the tax appeals tribunal which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax appeals tribunal which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(g) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (f) of this section shall, when the decision of the tax appeals tribunal has become final, be credited or refunded in accordance with subdivision (a) of section 11-526 of this chapter and shall not exceed the amount of tax which the tax appeals tribunal determines as part of its decision was paid:

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim has been filed, whether or not filed, stating the grounds upon which the tax appeals tribunal finds that there is an overpayment.

(h) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by the taxpayer on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment, except that for taxable years beginning on or after January first, two thousand sixteen, in the case of a taxpayer classified as a partnership for federal income tax purposes, such amount shall be deemed to have been paid on the fifteenth day of the third month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(j) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section 11-526 of this chapter.

(k) Notice of change or correction of sales and compensating use tax liability. If a taxpayer is required by section 11-519.1 of this chapter to file a report or amended return or report in respect of a change or correction of his or her sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return or report was required to be filed with the commissioner of finance. The amount of such credit or refund shall be computed without change of the allocation of income upon which the taxpayer's return, or any additional assessment, was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

§ 11-528 Interest on overpayment. (a) General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of finance pursuant to section 11-537 of this chapter, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date, to be determined by the commissioner of finance, preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late and amended returns and claims for credit or refund. Notwithstanding paragraph one or two of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return, determined with regard to extensions, or claimed on an amended return of tax or claimed on a claim, for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provisions of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund of an overpayment.

(5) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax and payment of estimated tax. The provisions of subdivisions (h) and (i) of section 11-527 of this chapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Refund within three months of claim for overpayment. If any overpayment of tax imposed by this chapter is credited or refunded within three months after the last date prescribed, or permitted by extension of time, for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed, or permitted by extension of time, for the filing of the return of tax for such year shall be considered as filed on such last day.

(d) Refund of tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form. (1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information, whether on the return or on required attachments, to permit the mathematical verification of tax liability shown on the return.

(f) Cross-reference. For provision with respect to interest after failure to file notice of federal or New York state change under section 11-519 of this chapter, see subdivision (c) of section 11-527 of this chapter.

§ 11-529 Petition to tax appeals tribunal. (a) General. The form of a petition to the tax appeals tribunal, and further proceedings before the tax appeals tribunal in any case initiated by the filing of a petition, shall be governed by such rules as the tax appeals tribunal shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. A decision of the tax appeals tribunal shall be rendered, and notice thereof shall be given, in the manner provided by section one hundred seventy-one of the charter of the preceding municipality.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-521 of this chapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section 11-527 of this chapter.

(c) Petition for refund. A taxpayer may file a petition with the tax appeals tribunal for the amounts asserted in a claim for refund if:

(1) the taxpayer has filed a timely claim for refund with the commissioner of finance,

(2) the taxpayer has not previously filed with the tax appeals tribunal a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section 11-527 of this chapter, and

(3) either: (A) six months have expired since the claim was filed, or (B) the commissioner of finance has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the commissioner of finance. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by

this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(4) If the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title, a taxpayer who is eligible to file a petition for refund with the tax appeals tribunal pursuant to this subdivision may request a conciliation conference prior to filing such petition, provided the request is made within the time prescribed for filing the petition. Notwithstanding anything in this subdivision to the contrary, if the taxpayer has requested a conciliation conference in accordance with the procedure established pursuant to section 11-124 of this title, a petition for refund may be filed no later than ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding.

(d) Assertion of deficiency after filing petition. (1) Petition for redetermination of deficiency. If a taxpayer files with the tax appeals tribunal a petition for redetermination of a deficiency, the tax appeals tribunal shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-525 of this chapter, if claim therefor is asserted at or before the hearing under the rules of the tax appeals tribunal.

(2) Petition for refund. If the taxpayer files with the tax appeals tribunal a petition for credit or refund for a taxable year, the tax appeals tribunal may:

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax appeals tribunal, and within the period in which an assessment would be timely under section 11-523 of this chapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax appeals tribunal.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner of finance under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax appeals tribunal under this section, no notice of deficiency under section 11-521 of this chapter may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to a change or correction in federal or New York state taxable income required to be reported under section 11-519 of this chapter or with respect to a state change or correction of sales and compensating use tax liability to be reported under section 11-519.1 of this chapter.

(e) Burden of proof. In any case before the tax appeals tribunal under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner of finance:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase

in deficiency is the result of a change or correction of federal or New York state taxable income required to be reported under section 11-519 of this chapter, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under section 11-519.1 of this title, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subdivision (k) of section 11-525 of this chapter.

(f) Evidence of related federal or state determination. Evidence of a federal or state determination relating to issues raised in a case before the tax appeals tribunal under this section shall be admissible, under rules established by the tax appeals tribunal.

(g) Jurisdiction over other years. The tax appeals tribunal shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 11-530 Review of tax appeals tribunal's decision. (a) General. A decision of the tax appeals tribunal sitting en banc shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified mail, return receipt requested, to the taxpayer and the commissioner of finance.

(b) Judicial review exclusive remedy. The review of a decision of the tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond, which may be a jeopardy bond under subdivision (h) of section 11-534 of this chapter, in the amount of the portion of the deficiency, including interest and other amounts, in respect of which the application for review is made and all costs and charges which may accrue against such taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency, including interests and other amounts, as finally determined and such costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the tax appeals tribunal is paid after the filing of the

review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review. If the amount of a deficiency determined by the tax appeals tribunal is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited, or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of tax appeals tribunal's decision. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review. Notwithstanding the provisions of this subdivision, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of decision is sent by certified mail to the taxpayer and the commissioner of finance.

§ 11-531 Mailing rules; holidays; miscellaneous. (a) Timely mailing. (1) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by the United States mail to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of finance or, where relevant, the tax appeals tribunal shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. Except as provided in paragraph two of this subdivision, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulations of the commissioner of finance or, where relevant, the tax appeals tribunal.

(2) (A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery

service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner may withdraw such designation for purposes of this title. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in paragraph one of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be given in the last return filed by the taxpayer, unless subsequently to the filing of such return the taxpayer shall have notified the commissioner of finance of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(d) Certificate: unfiled return. For purposes of this chapter and sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this title, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

§ 11-532 Collection, levy and liens. (a) Collection procedures. The taxes imposed by this chapter shall be collected by the commissioner of

finance, and the commissioner may establish the mode or time for the collection of any amount due it under this chapter if not otherwise specified. The commissioner of finance shall, upon request, give a receipt for any sum collected under this chapter. The commissioner of finance may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

(b) Notice and demand for tax. The commissioner of finance shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within the ten days after notice and demand herefor is given to such person under subdivision (b) of this section, the commissioner of finance may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding such person to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner of finance and pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner of finance and upon failure or refusal to pay such tax or other amount the commissioner of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment. When a warrant has been filed with the county clerk the commissioner of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be

entitled to the same fees for the sheriff's services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not a resident of this state. Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident of this state, and it appears to the commissioner of finance that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the commissioner of finance may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at the taxpayer's last known address, subject to the rules for mailing provided in subdivision (a) of section 11-521 of this chapter. Such warrant shall command the officer or employee to proceed in Richmond county, and such officer or employee shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner of finance may also, in the commissioner's discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner of finance shall deem proper and sufficient.

(h) Action by city for recovery of taxes. Action may be brought by the corporation counsel of the city at the instance of the commissioner of finance as agent and trustee for the city to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced.

(i) Release of lien or vacating warrant. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision (d) or (g) of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-533 Transferees. (a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the commissioner of finance under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assess-

ment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee.

(b) Exceptions. (1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) of this section or the immediately preceding paragraph of this subdivision for the assessment of the liability, the commissioner of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-527 of this chapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-527 of this chapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-527 of this chapter shall be increased by the period from the date of such expiration to the date of agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if such person had lived.

(d) Evidence. Notwithstanding the provisions of subdivision (e) of section 11-537 of this chapter the commissioner of finance shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-529 of this chapter for rules as to burden of proof.

§ 11-534 Jeopardy assessment. (a) Authority for making. If the commissioner of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, the commissioner shall, notwithstanding the provision of sections 11-521 and 11-536 of this chapter, and immediately assess such deficiency, together with all interest, penalties and additions to tax provided for by law, and notice and demand shall be made by the commissioner of finance for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect to the tax to which the jeopardy assessment relates has been mailed under section 11-521 of this chapter, then the commissioner of finance shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax appeals tribunal. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has heretofore filed a petition with the tax appeals tribunal. The commissioner of finance may, at any time before the tax appeals tribunal renders its decision, abate such assessment, or any unpaid portion thereof, to the extent that the commissioner believes the assessment to be excessive in amount. The tax appeals tribunal may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax appeals tribunal. If the jeopardy assessment is made after the decision of the tax appeals tribunal is rendered, such assessment may be made only in respect of the deficiency determined by the tax appeals tribunal in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax appeals tribunal has become final or after the taxpayer has made an application for review of the decision of the tax appeals tribunal.

(f) Collection of unpaid amounts. When a petition has been filed with the tax appeals tribunal and when the amount which should have been assessed has been determined by a decision of the tax appeals tribunal which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-526 of this chapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the commissioner of finance.

(g) Abatement if jeopardy does not exist. The commissioner of finance may abate the jeopardy assessment if the commissioner finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax appeals tribunal in respect of the deficiency has been rendered or, if no petition is filed with the tax appeals tribunal, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the commissioner of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount, together with interest thereon, the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request

of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice or deficiency under section 11-521 of this chapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to tax appeals tribunal. If the bond is given before the taxpayer has filed his or her petition under section 11-529 of this chapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment, collection of which is stayed by the bond, as is not abated by a decision of the tax appeals tribunal which has become final. If the tax appeals tribunal determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax appeals tribunal is rendered.

(j) Stay of sale of seized property pending tax appeals tribunal decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-529 of this chapter for filing a petition with the tax appeals tribunal, and

(2) if a petition is filed with the tax appeals tribunal, whether before or after the making of such jeopardy assessment, prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-524 of this chapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the commissioner of finance finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given to the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of

the commissioner of finance, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner of finance as provided in subdivision (l) of this section, the commissioner of finance may reopen such taxable period each time the taxpayer is found by the commissioner of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner of finance may be reopened by the taxpayer if the taxpayer files with the commissioner of finance a true and accurate return of taxable income and credits allowed under this chapter for taxable period, together with such other information as the commissioner of finance may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the commissioner of finance. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (l) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes under this chapter for prior years.

§ 11-535 Criminal penalties; cross-reference. For criminal penalties, see chapter forty of this title.

§ 11-536 Armed forces relief provisions. (a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter, in respect of the tax liability, including any interest, penalty, or addition to the tax, of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax;

(B) payment of any tax or any installment thereof or of any other liability to the commissioner of finance, in respect thereof;

(C) filing a petition with the tax appeals tribunal for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax appeals tribunal;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) assessment of tax;

(G) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the commissioner of finance in respect of tax;

(H) collection, by the commissioner of finance, by levy or otherwise of the amount of any liability in respect of tax;

(I) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(J) any other act required or permitted under this chapter or specified in regulations prescribed under this section by the commissioner of finance.

(2) The amount of any credit or refund (including interest).

(b) Action taken before ascertainment of right to benefits. The assessment or collection of the tax imposed by this chapter or of any liability to the commissioner of finance in respect of such tax, or any action or proceeding by or on behalf of the commissioner of finance in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a) of this section.

(c) Members of armed forces dying in action. In the case of any person who dies during an induction period while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of such person's death, or with respect to any prior taxable year ending on or after the first day he or she so served in a combat zone, and no returns shall be required in behalf of such person or such person's estate for such year; and the tax for any such taxable year which is unpaid at the date of his or her death, including interest, additions to tax and penalties, if any, shall not be assessed and if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such person's estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to such person's surviving spouse.

§ 11-537 General powers of commissioner of finance. (a) General. The commissioner of finance shall administer and enforce the tax imposed by this chapter and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provision of this chapter; and the commissioner may delegate his or her powers and functions under all parts of this chapter to one of the commissioner's deputies or to any employee or employees of the commissioner's department.

(b) Examination of books and witnesses. The commissioner of finance for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons.

(c) Abatement authority. The commissioner of finance, of his or her own motion, may abate any small unpaid balance of an assessment of tax under this part, or any liability in respect thereof, if the commissioner of finance determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of

any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the commissioner of finance at any time, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States, this state and other states. Notwithstanding the provisions of section 11-538 of this chapter, the commissioner of finance may permit the secretary of the treasury of the United States or the secretary's delegates, or the proper officer of this or any other state imposing an income tax upon the incomes of individuals, or the authorized representative of any such officer, to inspect any return filed under this chapter or may furnish to such officer or his or her authorized representative an abstract of any such return or supply such officer with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or such officer's representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner of finance and such information is to be used for tax purposes only; and provided further the commissioner of finance may furnish to the secretary of the treasury of the United States or the secretary's delegates or to the tax commission of the state of New York or its delegates such returns filed under this chapter and other tax information, as he or she may consider proper for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the commissioner of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury of the United States or the secretary's delegates or to such tax commission or its delegates. Where the commissioner of finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns or other information.

(f) (1) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-524, 11-525 and 11-528 of this chapter, but if no such rate or rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph two of this subdivision, but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which

such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rates. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(5) Cross-reference. For provisions relating to the power of the commissioner of finance to abate small amounts of interest, see subdivision (c) of this section.

(g) In computing the amount of any interest required to be paid under this chapter by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The provisions of this subdivision shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section 11-525 of this chapter.

§ 11-538 Secrecy requirement and the penalties for violation. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision four of

this section, any officer or employee of such depository, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or to the taxpayer's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns required under this chapter by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the enacting of this chapter. Reports and returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

2. Any officer or employee of the city or the state who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

3. Cross-reference: For criminal penalties, see chapter forty of this title.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax and reports and returns with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

5. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

7. Notwithstanding anything in subdivision one of this section, the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in subdivision (e) of section 11-506 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner of finance under this title.

§ 11-539 Inconsistencies with other laws. If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

§ 11-540 Disposition of revenues. All revenues resulting from the imposition of the taxes under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

## CHAPTER 6
## CITY BUSINESS
## TAXES
### SUBCHAPTER 1
### GENERAL PROVISIONS

§ 11-601 Definitions. When used in subchapters one through five:

1. "Taxpayer" means any corporation, association or other entity or individual subject to tax under this chapter;

2. "State", "the state" or "this state" means the state of New York;

3. "Tax law", "insurance law", "private housing finance law", "environmental conservation law", "public housing law", "state finance law", "general municipal law", "public service law", "workers' compensation law", "business corporation law", "civil practice law and rules", "criminal procedure law", and "banking law" refer to laws of the state;

4. "Superintendent of insurance", and "commissioner of health" refer to officials of the state;

5. "Commissioner of finance" means the commissioner of finance of the city;

6. "Department of finance" means the department of finance of the city;

7. "Domestic corporation" means a corporation organized under the laws of the state; and

8. "Tax appeals tribunal" means 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.

9. "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

10. "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

11. "Captive REIT" means a REIT (a) that is not regularly traded on an established securities market, and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a REIT. Any voting stock in a REIT that is held in a segregated asset account of a life insurance corporation, as described in section eight hundred seventeen of the internal revenue code, shall not be taken into account for purposes of determining whether a REIT is a captive REIT.

12. "Captive RIC" means a RIC (a) that is not regularly traded on an established securities market, and (b) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single corporation that is not exempt from federal income tax and is not a RIC. Any voting stock in a RIC that is held in a segregated asset account of a life insurance corporation, as described in section eight hundred seventeen of the internal revenue code, shall not be taken into account for purposes of determining whether a RIC is a captive RIC.

13. Unless a different meaning is clearly required, any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, and any reference to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred fifty-four, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same are included in the appendix to this chapter. The quotation of the aforesaid laws of the United States is intended to make them a part of any appropriate chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to any of the chapters.

## SUBCHAPTER 2
## GENERAL CORPORATION TAX

§ 11-602 Definitions. When used in this subchapter:

1. (a) "Corporation" includes (1) an association within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code, including a limited liability company, (2) a joint-stock company or association, (3) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and (4) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;

(b) (1) Notwithstanding paragraph (a) of this subdivision, an unincorporated organization that (i) is described in subparagraph one or three of such paragraph (a) and (ii) was subject to the provisions of chapter five of this title for its taxable year beginning in nineteen hundred ninety-five, may make a one-time election not to be treated as a corpo-

ration and, instead, to continue to be subject to the provisions of chapter five of this title for its taxable years beginning in nineteen hundred ninety-six and thereafter. Such election shall be made on the return prescribed pursuant to such chapter five for such electing organization's taxable year beginning in nineteen hundred ninety-six, which shall be filed on or before the due date, determined with regard to extensions, for filing such return.

(2) An election under this paragraph shall continue to be in effect until revoked by the unincorporated organization. An election under this paragraph shall be revoked by the filing of a return under this subchapter for the first taxable year with respect to which such revocation is to be effective, which return shall be filed on or before the due date, determined with regard to extensions, for filing such return. In no event shall such election or revocation be for a part of a taxable year.

(c) Notwithstanding paragraph (a) of this subdivision, a corporation shall not include an entity classified as a partnership for federal income tax purposes.

2. "Subsidiary" means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;

3. "Subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this subchapter or subchapter three of this chapter, provided, however, that, in the discretion of the commissioner of finance, there shall be deducted from subsidiary capital any liabilities which are directly or indirectly attributable to subsidiary capital;

4. "Investment capital" means investments in stocks, bonds and other securities, corporate and governmental, not held for sale to customers in the regular course of business, exclusive of subsidiary capital and stock issued by the taxpayer, provided, however, that, in the discretion of the commissioner of finance, there shall be deducted from investment capital any liabilities which are directly or indirectly attributable to investment capital; and provided, further, that investment capital shall not include any such investments the income from which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section, and that investment capital shall be computed without regard to any liabilities directly or indirectly attributable to such investments, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof;

5. "Investment income" means income, including capital gains in excess of capital losses, from investment capital to the extent included in computing entire net income, less, (a) in the discretion of the commissioner of finance, any deductions allowable in computing entire net income which are directly or indirectly attributable to investment capi-

tal or investment income, and (b) such portion of any net operating loss deduction allowable in computing entire net income, as the investment income, before such deduction, bears to entire net income, before such deduction, provided, however, that in no case shall investment income exceed entire net income;

6. (a) "Business capital" means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect;

(b) Provided, however, "business capital" shall not include assets to the extent employed for the purpose of generating income which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section and shall be computed without regard to liabilities directly or indirectly attributable to such assets, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

7. "Business income" means entire net income minus investment income;

8. "Entire net income" means total net income from all sources, which shall be presumably the same as the entire taxable income, but not alternative minimum taxable income,

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

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

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

(iv) which the taxpayer would have been required to report to the United States treasury department if no election had been made to treat the taxpayer as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, except as provided in this paragraph, and subject to any modification required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

(a) Entire net income shall not include:

(1) income, gains and losses from subsidiary capital which do not include the amount of a recovery in respect of any war loss;

(2) fifty percent of dividends other than from subsidiaries, except that entire net income shall include one hundred percent of dividends on shares of stock with respect to which a dividend deduction is disallowed by subsection (c) of section two hundred forty-six of the internal revenue code;

(2-a) any amounts treated as dividends pursuant to section seventy-eight of the internal revenue code and not otherwise deductible under subparagraphs one and two of this paragraph;

(3) bona fide gifts;

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses;

(5) any refund or credit of a tax imposed under this chapter, or imposed by article nine or nine-A or thirty-two of the tax law as such article was in effect on December thirty-first, two thousand fourteen, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter three of this chapter for any prior year;

(6) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the taxpayer's distributive or pro rata share for federal income tax purposes or which the taxpayer is required to take into account separately for federal income tax purposes;

(7) that portion of wages and salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty C of the internal revenue code;

(8) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) the amount deductible pursuant to paragraph (j) of this subdivision;

(11) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in subparagraph eleven of paragraph (b) of this subdivision attributable to such property exceeds the aggregate of the

amounts described in paragraph (j) of this subdivision attributable to such property;

(12) for taxable years ending after September tenth, two thousand one, the amount deductible pursuant to paragraph (k) of this subdivision;

(13) the amount deductible pursuant to paragraph (o) of this subdivision;

(14) any amount excepted, for purposes of subsection (a) of section one hundred eighteen of the internal revenue code, from the term "contribution to the capital of the taxpayer" by paragraph two of subsection (b) of section one hundred eighteen of the internal revenue code;

(15) the amount of any gain added back to determine entire net income in a previous taxable year pursuant to subparagraph nineteen of paragraph (b) of this subdivision that is included in federal gross income for the taxable year; and

(16) the amount of any grant received through either the COVID-19 pandemic small business recovery grant program, pursuant to section sixteen-ff of the New York state urban development corporation act, or the small business resilience grant program administered by the department of small business services, to the extent the amount of either such grant is included in federal taxable income.

(a-1) Notwithstanding any other provision of this subchapter, for taxable years beginning on or after August first, two thousand two, in the case of a taxpayer that is a partner in a partnership subject to the tax imposed by chapter eleven of this title as a utility, as defined in subdivision six of section 11-1101 of such chapter, entire net income shall not include the taxpayer's distributive or pro rata share for federal income tax purposes of any item of income, gain, loss or deduction of such partnership, or any item of income, gain, loss or deduction of such partnership that the taxpayer is required to take into account separately for federal income tax purposes.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) the amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of any corporation,

(2) any part of any income from dividends or interest on any kind of stock, securities, or indebtedness, except as provided in clauses one and two of paragraph (a) of this subdivision,

(3) taxes on or measured by profits or income paid or accrued to the United States, any of its possessions or to any foreign country, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any foreign country or by any possession of the United States, or taxes on or measured by profited or income paid or accrued to the state or any subdivision thereof, including taxes paid or accrued under article nine, nine-A, thirteen-A, twenty-four-A, or twenty-four-B of the tax law or under article thirty-two of the tax law as such article was in effect on December thirty-first, two thousand fourteen,

(3-a) taxes on or measured by profits or income, or which include profits or income as a measure, paid or accrued to any other state of the United States, or any political subdivision thereof, or to the District of Columbia, including taxes expressly in lieu of any of the foregoing taxes otherwise generally imposed by any other state of the United States, or any political subdivision thereof, or the District of Columbia;

(4) taxes imposed under this chapter,

(4-a) (A) the entire amount allowable as an exclusion or deduction for stock transfer taxes imposed by article twelve of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only to the extent that such taxes are incurred and paid in market making transactions, and

(B) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision twelve of section 11-604 of this subchapter,

(4-b) the amount allowed as an exclusion or a deduction imposed by the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision thirteen of section 11-604 of this subchapter,

(4-c) the amount allowed as an exclusion or a deduction imposed by the tax law in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision fourteen of section 11-604 of this subchapter,

(4-d) the amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law in determining the entire taxable income which the taxpayer is required to report to the United States Treasury Department, but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision fifteen of section 11-604 of this chapter,

(4-g) The amount allowed as an exclusion or deduction for sales and use taxes imposed by section eleven hundred seven of the tax law, or for any interest imposed in connection therewith, in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision seventeen-a of section 11-604 of this subchapter.

(6) in the discretion of the commissioner of finance, any amount of interest directly or indirectly and any other amount directly or indirectly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital,

(7) any amount by reason of the granting, issuing or assuming of a restricted stock option, as defined in the internal revenue code of nineteen hundred fifty-four, or by reason of the transfer of the share of stock upon the exercise of the option, unless such share is disposed of by the grantee of the option within two years from the date of the granting of the option or within six months after the transfer of such share to the grantee,

(8) in the case of a taxpayer who is separately or as a partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, such taxpayer's distributive or pro rata share of the allocated entire net income of such business as determined under sections fifteen hundred three and fifteen hundred four of the tax law,

provided however, in the event such allocated entire net income is a loss, such taxpayer's distributive or pro rata share of such loss shall not be subtracted from federal taxable income in computing entire net income under this subdivision,

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(10) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(11) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code,

(12) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property exceeds the aggregate of the amounts described in subparagraph eleven of this paragraph attributable to such property,

(13) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the amount allowable

as a deduction under section one hundred sixty-seven of the internal revenue code,

(14) for taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the amount allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty F of the internal revenue code,

(15) the amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code,

(16) the amount of any federal deduction for taxes imposed under article twenty-three of the tax law,

(17) the amount of any federal deduction that would have been allowed pursuant to subparagraph (A) of paragraph one of subdivision (a) of section two hundred fifty of the internal revenue code if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code,

(18) for taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest deduction allowed pursuant to paragraph ten of subdivision (j) of section one hundred sixty-three of the internal revenue code, and

(19) the amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section one thousand four hundred Z-two of the internal revenue code.

(c) Entire net income shall include income within and without the United States;

(c-1)(1) Notwithstanding any other provision of this subchapter, in the case of a taxpayer which is a foreign air carrier holding a foreign air carrier permit issued by the United States department of transportation pursuant to section four hundred two of the federal aviation act of nineteen hundred fifty-eight, as amended, and which is qualified under subparagraph two of this paragraph, entire net income shall not include, and shall be computed without the deduction of, amounts directly or indirectly attributable to, (i) any income derived from the international operation of aircraft as described in and subject to the provisions of section eight hundred eighty-three of the internal revenue code, (ii) income without the United States which is derived from the operation of aircraft, and (iii) income without the United States which is of a type described in subdivision (a) of section eight hundred eighty-one of the internal revenue code except that it is derived from sources without the United States. Entire net income shall include income described in clauses (i), (ii) and (iii) of this subparagraph in the case of taxpayers not described in this subparagraph.

(2) A taxpayer is qualified under this subparagraph if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any income tax or other tax based on or measured by income or receipts imposed by such foreign country or countries or any political subdivision thereof, or if so subject to such tax, are provided an exemption from such tax equivalent to that provided for in this paragraph.

(d) The commissioner of finance may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the

year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer;

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity;

(f) A net operating loss deduction shall be allowed which shall be the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code or which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, except that in every instance where such deduction is allowed under this subchapter:

(1) any net operating loss included in determining such deduction shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to paragraphs (a), (b), (g) and (h) of this subdivision,

(2) such deductions shall not include any net operating loss sustained during any taxable year in which the taxpayer was not subject to the tax imposed by this subchapter,

(3) such deduction shall not exceed the deduction for the taxable year allowed under section one hundred seventy-two of the internal revenue code, or the deduction for the taxable year which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code,

(4) any net operating loss for a taxable year beginning in nineteen hundred eighty-one shall be computed without regard to the deduction allowed with respect to recovery property under section one hundred sixty-eight of the internal revenue code; in lieu of such deduction, a taxpayer shall be allowed for such taxable year with respect to such property the depreciation deduction allowable under section one hundred sixty-seven of such code as such section was in full force and effect on December thirty-first, nineteen hundred eighty, and

(5) the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code shall for purposes of this paragraph be determined as if the taxpayer had elected under such section to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable years ending after June thirtieth, nineteen hundred eighty-nine.

(6) Notwithstanding any other provision of this subchapter to the contrary, for taxable years beginning before January first, two thousand twenty-one, any amendment to section one hundred seventy-two of the internal revenue code made after March first, two thousand twenty shall not apply to this subchapter.

(g) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1)(A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste, as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law, from a point immediately preceding the point of such treatment, neutralization or stabilization

to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source, as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law, from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) However, such deduction shall be allowed only (A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the state commissioner of environmental conservation or the state commissioner's designated representative, in the same manner as provided for in section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with applicable provisions of the environmental conservation law, the state sanitary code and regulations, permits or orders issued pursuant thereto, and

(C) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation of the same property other than the deductions allowed by this paragraph except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and

(D) where the election provided for in paragraph (d) of subdivision three of section 11-604 of this subchapter has not been exercised in respect to the same property.

(3)(A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or

carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the United States treasury for such taxable year;

(h) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six; which had a federal adjusted basis on such date, or on the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, lower than its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior thereto, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, there shall be deducted from entire net income, the difference between (1) the amount of the taxpayer's federal taxable income, and (2) the amount of the taxpayer's federal taxable income, if smaller than the amount described in subparagraph one of this paragraph computed as if the federal adjusted basis of each such property on the sale or other disposition of which gain was derived, on the date of the sale or other disposition had been equal to either (A) its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six or (B) the amount realized from its sale or disposition, whichever is lower; provided, however, that the total modification provided by this paragraph shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property.

(i) If the period covered by a report under this subchapter is other than the period covered by the report of the United States treasury department, entire net income shall be determined by multiplying the federal taxable income, as adjusted pursuant to the provisions of this subchapter, by the number of calendar months or major parts thereof covered by the report under this subchapter and dividing by the number of calendar months or major parts thereof covered by the report to such department.

If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period

covered by the report under this subchapter, the commissioner of finance shall be authorized in his or her discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this subchapter.

(j) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of paragraph (o) of this subdivision, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty-F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(l) for taxable years ending after September tenth, two thousand one, upon the disposition of property to which paragraph (k) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph twelve of paragraph (a) and subparagraph thirteen of paragraph (b) of this subdivision attributable to such property.

(m) for purposes of this paragraph and paragraph (l) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined in this paragraph, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the

taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(n) Related members expense add back.

(1) Definitions. (A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that city, the maximum statutory rate of tax imposed by said city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of

the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) (i) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements: (I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-604 of this subchapter for the taxable year.

(iii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

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

(o) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the

deductions allowable under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five. For purposes of paragraph (k) and subparagraph thirteen of paragraph (b) of this subdivision, the terms qualified resurgence zone property and qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred-L of the internal revenue code shall not include any sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code.

(p) Upon the disposition of property to which paragraph (o) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph thirteen of paragraph (a) and subparagraph fourteen of paragraph (b) of this subdivision attributable to such property.

9. (a) The term "calendar year" means a period of twelve calendar months, or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter, ending on the thirty-first day of December, provided the taxpayer keeps its books on the basis of such period or on the basis of any period ending on any day other than the last day of a calendar month, or provided the taxpayer does not keep books, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a fiscal year to a calendar year, the period from the close of its last old fiscal year up to and including the following December thirty-first.

(b) The term "fiscal year" means a period of twelve calendar months, or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter, ending on the last day of any month other than December, provided the taxpayer keeps its books on the basis of such period, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a calendar year to a fiscal year or from one fiscal year to another fiscal year, the period from the close of its last old calendar or fiscal year up to the date designated as the close of its new fiscal year.

10. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest property and evidences of debt.

§ 11-603 Imposition of tax; exemptions. 1. For the privilege of doing business, or of employing capital, or of owning or leasing property in the city in a corporate or organized capacity, or of maintaining an office in the city, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a tax, upon the basis of its entire net income, or upon such other basis as may be applicable as provided by this section, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as provided by this section, on or before the fifteenth day of March next succeeding the close of each such year, or, in the case of a taxpayer which reports on the basis of a fiscal year, within two and one-half

months after the close of such fiscal year, and shall be paid as provided by this section.

2. A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the city, for the purposes of this subchapter, by reason of (a) the maintenance of cash balances with banks or trust companies in the city, or (b) the ownership of shares of stock or securities kept in the city, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in the city by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in the city, and does not employ capital or own or lease property in the city, or (e) the keeping of books or records of a corporation in the city if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in the city, or (f) any combination of the activities described in this subdivision.

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the city, for the purposes of this subchapter, if its activities in the city are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. For purposes of this subdivision, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

3. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any corporation, shall be subject to the tax imposed by this subchapter in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation. A dissolved corporation which continues to conduct business shall also be subject to the tax imposed by this subchapter.

4. (a) Corporations subject to tax under subchapter three of this chapter or under chapter eleven of this title, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, bank holding companies filing a combined return in accordance with subdivision (f) of section 11-646 of this chapter, a captive REIT or a captive RIC filing a combined return under subdivision (f) of section 11-646 of this chapter, housing companies organized and operating pursuant to the provisions of article two of the private housing finance law, housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law, corporations described in section three of the tax law, a corporation principally engaged in the operation of marine vessels whose activities in the city are limited

exclusively to the use of property in interstate or foreign commerce, provided, however, such a corporation will not be subject to tax under this subchapter solely because it maintains an office in the city, or employs capital in the city, in connection with such use of property, a corporation principally engaged in the conduct of a ferry business and operating between any of the boroughs of the city under a lease granted by the city and a corporation principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, all of the capital stock of which is owned by a municipal corporation of this state, shall not be subject to tax under this subchapter; provided, however, that any corporation, other than (1) a utility corporation subject to the supervision of the state department of public service, and (2) for taxable years beginning on or after August first, two thousand two, a utility as defined in subdivision six of section 11-1101 of this title, which is subject to tax under chapter eleven of this title as a vendor of utility services shall be subject to tax under this subchapter, but in computing the tax imposed by this section pursuant to the provisions of clause one of subparagraph (a) of paragraph A of subdivision one of section 11-604 of this subchapter, business income allocated to the city pursuant to paragraph (a) of subdivision three of such section shall be reduced by the percentage which such corporation's gross operating income subject to tax under chapter eleven of this title is of its gross operating income.

(b) The term "gross operating income", when used in paragraph (a) of this subdivision, means receipts received in or by reason of any transaction had and consummated in the city, including cash, credits and property of any kind or nature, whether or not such transaction is made for profit, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever, interest or discount paid or any other expenses whatsoever.

(c) If it shall appear to the commissioner of finance that the application of the proviso of paragraph (a) of this subdivision, does not fairly and equitably reflect the portion of the taxpayer's business income allocable to the city which is attributable to its city activities which are not taxable under chapter eleven of this title, the commissioner may prescribe other means or methods of determining such portion, including the use of the books and records of the taxpayer, if the commissioner finds that such means or methods used in keeping them fairly and equitably reflect such portion.

5. The tax imposed by subdivision one of this section, with the modifications provided by subdivision six of this section, is imposed for each calendar or fiscal year beginning with calendar or fiscal years ending in or with the calendar year nineteen hundred sixty-six.

6. (a) The tax for any taxable year ending prior to December thirty-first, nineteen hundred sixty-six shall be an amount equal to the tax imposed by subdivision one of this section for such taxable year, multiplied by the number of months, or major portions thereof, in such taxable year which occur after December thirty-first, nineteen hundred sixty-five and divided by the number of months, or major portions thereof, in such taxable year.

(b) In lieu of the method of computation of tax prescribed in paragraph (a) of this subdivision, if the taxpayer maintained adequate records for the portion of any taxable year ending prior to December thirty-first, nineteen hundred sixty-six, which portion falls within the calendar year nineteen hundred sixty-six, it may elect to compute the

tax for such taxable year by determining entire net income on the basis of the entire taxable income which it would have reported for federal income tax purposes had it filed a federal income tax return for a taxable year beginning January first, nineteen hundred sixty-six and ending with the close of its actual taxable year and such taxable year beginning January first, nineteen hundred sixty-six, shall be deemed to be the period covered by its report, except that in computing such tax any portion of a capital loss which results from a capital loss carryover and any net operating loss deduction, as modified pursuant to paragraph (f) of subdivision eight of section 11-602 of this subchapter, shall be reduced by the same part of such portion of such capital loss or of such net operating loss deduction, as the case may be, as the number of months, or major portions thereof, in the taxable year occurring before January first, nineteen hundred sixty-six is of the number of months, or major portions thereof, in such taxable year.

7. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either clause one of subparagraph (a) of paragraph A of subdivision one of section 11-604 of this subchapter with respect to its entire net income, or clause four of such subparagraph, whichever is greater, and shall not be subject to any tax under subchapter three of this chapter, except for a captive REIT required to file a combined return under subdivision (f) of section 11-646 of this chapter. In the case of such a real estate investment trust, including a captive REIT as defined in section 11-601 of this chapter, the term "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 such code, subject to the modification required by subdivision eight of section 11-602 of this subchapter, other than the modification required by clause two of paragraph (a) and by paragraph (f) thereof, including the modifications required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

8. For any taxable year beginning on or after January first, nineteen hundred eighty-one of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under clause one or four of subparagraph (a) of paragraph E of subdivision one of section 11-604 of this subchapter, whichever is greater, and such company shall not be subject to any tax under subchapter three of this chapter. The term "entire net income" used in subdivision one of this section 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 subdivision eight of section 11-602 of this subchapter, other than the modification required by clause two of paragraph (a) and by paragraph (f) of such subdivision, including the modification required by paragraphs (d) and (e) of subdivision three of section 11-604 of this subchapter.

9. For any taxable year beginning on or after January first, nineteen hundred eighty-seven, an organization described in paragraph two or twenty-five of subdivision (c) of section five hundred one of the internal revenue code of nineteen hundred eighty-six shall be exempt from all taxes imposed by this chapter.

§ 11-604 Computation of tax. 1. A. For taxable years beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred seventy-four, and for taxable years beginning on or after January first, nineteen hundred seventy-six, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of six and seven-tenths per centum of its entire net income, or the portion of such entire net income allocated within the city as provided in this section, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one mill for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as provided in this section, except that in the case of a cooperative housing corporation as defined in the internal revenue code, or in the case of a housing company organized and operating pursuant to the provisions of article four of the private housing finance law, the applicable rates shall be one-quarter of one mill, or (3) computed at the rate of six and seven-tenths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars, except as provided in this section, and any net loss for the reported year, or on the portion of any such sum allocated within the city as provided in this section for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of one-half mill for each dollar of the portion of its subsidiary capital allocated within the city as provided in this section. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of subparagraph (a) of this paragraph shall be prorated according to the period such taxpayer was subject to tax.

B. For taxable years beginning on or after January first, nineteen hundred seventy-five and before January first nineteen hundred seventy-seven, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of ten and five one-hundredths per centum of its entire net income, or the portion of such entire net income allocated within the city as provided in this paragraph, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as provided in this paragraph, except that in the case of a cooperative housing corporation as defined in the internal revenue code, or in the case of a housing company organized and operating pursuant to the provisions of article four of the private housing finance law, the applicable rate shall be four-tenths of one mill, or (3) computed at the rate of ten and five one-hundredths per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its

issued capital stock minus fifteen thousand dollars, except as provided in this paragraph, and any net loss for the reported year, or on the portion of any such sum allocated within the city as provided in this paragraph for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) one hundred twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as provided in this paragraph. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of subparagraph (a) of this paragraph shall be prorated according to the period such taxpayer was subject to tax.

C. For each taxable year beginning in nineteen hundred seventy-four and ending in nineteen hundred seventy-five, two tentative taxes shall be computed, the first as provided in paragraph A and the second as provided in paragraph B 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-four and the number of days in nineteen hundred seventy-five, respectively, bears to the number of days in the entire taxable year.

D. For taxable years beginning on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred seventy-eight, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer: (a) a tax (1) computed at the rate of nine and one-half per centum of its entire net income, or the portion of such entire net income allocated within the city as provided in this paragraph, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (2) computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as provided in this paragraph, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be four-tenths of one mill, or (3) computed at the rate of nine and one-half per centum on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars, except as provided in this paragraph, and any net loss for the reported year, or on the portion of any such sum allocated within the city as provided in this paragraph for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, or (4) one hundred twenty-five dollars, whichever is greatest, plus (b) a tax computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as provided in this paragraph. In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of subparagraph (a) of this paragraph shall be prorated according to the period such taxpayer was subject to tax.

E. For taxable years beginning on or after January first, nineteen hundred seventy-eight but before January first, two thousand twenty-seven, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer:

(a) whichever of the following amounts is the greatest:

(1) an amount computed, for taxable years beginning before nineteen hundred eighty-seven, at the rate of nine per centum, and for taxable

years beginning after nineteen hundred eighty-six, at the rate of eight and eighty-five one-hundredths per centum, of its entire net income or the portion of such entire net income allocated within the city as provided in this paragraph, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section,

(2) an amount computed at one and one-half mills for each dollar of its total business and investment capital, or the portion thereof allocated within the city, as provided in this paragraph, except that in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be four-tenths of one mill,

(3) an amount computed, for taxable years beginning before nineteen hundred eighty-seven, at the rate of nine per centum, and for taxable years beginning after nineteen hundred eighty-six, at the rate of eight and eighty-five one-hundredths per centum, on thirty per centum of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five per centum of its issued capital stock minus fifteen thousand dollars, subject to proration as provided in this paragraph, and any net loss for the reported year, or on the portion of any such sum allocated within the city as provided in this paragraph for the allocation of entire net income, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section, provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, the provisions of paragraph H of this subdivision shall apply for purposes of the computation under this clause, or

(4) for taxable years ending on or before June thirtieth, nineteen hundred eighty-nine, one hundred twenty-five dollars, for taxable years ending after June thirtieth, nineteen hundred eighty-nine and beginning before two thousand nine, three hundred dollars, and for taxable years beginning after two thousand eight:

| If city receipts are: | Fixed dollar minimum tax is: |
|---|---|
| Not more than $100,000 | $25 |
| More than $100,000 but not over $250,000 | $75 |
| More than $250,000 but not over $500,000 | $175 |
| More than $500,000 but not over $1,000,000 | $500 |
| More than $1,000,000 but not over $5,000,000 | $1,500 |
| More than $5,000,000 but not over $25,000,000 | $3,500 |
| Over $25,000,000 | $5,000 |

For purposes of this clause, city receipts are the receipts computed in accordance with subparagraph two of paragraph (a) of subdivision three of this section for the taxable year. For taxable years beginning after two thousand eight, if the taxable year is less than twelve months, the amount prescribed by this clause shall be reduced by twenty-five percent if the period for which the taxpayer is subject to tax is more than six months but not more than nine months and by fifty percent if the period for which the taxpayer is subject to tax is not more than six months. If the taxable year is less than twelve months, the amount of city receipts for purposes of this clause is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve plus;

(b) an amount computed at the rate of three-quarters of a mill for each dollar of the portion of its subsidiary capital allocated within the city as provided in this paragraph.

In the case of a taxpayer which is not subject to tax for an entire year, the exemption allowed in clause three of subparagraph (a) of this paragraph shall be prorated according to the period such taxpayer was subject to tax. Provided, however, that this paragraph shall not apply to taxable years beginning after December thirty-first, two thousand twenty-six. For the taxable years specified in this subparagraph, the tax imposed by subdivision one of section 11-603 of this subchapter shall be, in the case of each taxpayer, determined as specified in paragraph A of this subdivision, provided, however, that the provisions of paragraphs G and H of this subdivision shall apply for purposes of the computation under clause three of subparagraph (a) of such paragraph.

F. Notwithstanding any other provision of this subdivision to the contrary, for taxable years beginning after nineteen hundred eighty-seven and before two thousand nine the amount of tax computed on the basis of the taxpayer's total business and investment capital, or the portion thereof allocated within the city, shall in no event exceed three hundred fifty thousand dollars and for taxable years beginning after two thousand eight the amount of tax computed on the basis of the taxpayer's total business and investment capital, or the portion thereof allocated within the city, shall in no event exceed one million dollars.

G. In the case of a foreign air carrier described in subparagraph one of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, there shall be excluded from the computation of the tax under clause three of subparagraph (a) of paragraph E of this subdivision salaries and other compensation described therein which are directly attributable to the generation of income excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter.

H. For taxable years beginning on or after July first, nineteen hundred ninety-six, the computation under clause three of subparagraph (a) of paragraph E of this subdivision shall be subject to the following modifications:

(a) (1) For taxable years beginning on or after July first, nineteen hundred ninety-six but before July first, nineteen hundred ninety-eight, only seventy-five percent of the total salaries and other compensation paid to the taxpayer's elected or appointed officers shall be added to the entire net income entering into such computation; for taxable years beginning on or after July first, nineteen hundred ninety-eight but before July first, nineteen hundred ninety-nine, only fifty percent of such salaries and other compensation shall be added to such entire net income; and for taxable years beginning on or after July first, nineteen hundred ninety-nine, no part of such salaries and other compensation shall be added to such entire net income.

(2) Notwithstanding anything in clause one of this subparagraph to the contrary, the full amount of the salary or other compensation paid to any such elected or appointed officer shall be added to entire net income as provided in clause three of subparagraph (a) of paragraph E of this subdivision if such officer was, at any time during the taxable year, a stockholder owning more than five percent of taxpayer's issued capital stock.

(b) For taxable years beginning on or after July first, nineteen hundred ninety-seven but before July first, nineteen hundred ninety-eight, the fixed dollar amount entering into the computation under

clause three of subparagraph (a) of paragraph E of this subdivision shall be thirty thousand dollars instead of fifteen thousand dollars; and for taxable years beginning on or after July first, nineteen hundred ninety-eight, such fixed dollar amount shall be forty thousand dollars.

(c) For taxable years beginning on or after January first, two thousand seven and before January first, two thousand eight the per centum entering into the computation under clause three of subparagraph (a) of paragraph E of this subdivision shall be twenty-six and one-fourth per centum instead of thirty per centum, for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine such per centum shall be twenty-two and one-half per centum, for taxable years beginning on or after January first, two thousand nine and before January first, two thousand ten such per centum shall be eighteen and three-fourths per centum and for taxable years beginning on or after January first, two thousand ten such per centum shall be fifteen per centum.

I. Notwithstanding any provision of this subdivision to the contrary, for taxable years beginning on or after January first, two thousand seven for any corporation that:

(a) has a business allocation percentage for the taxable year, as determined under paragraph (a) of subdivision three of this section, of one hundred percent;

(b) has no investment capital or income at any time during the taxable year;

(c) has no subsidiary capital or income at any time during the taxable year; and

(d) has gross income, as defined in section sixty-one of the internal revenue code, less than two hundred fifty thousand dollars for the taxable year:

the tax imposed by subdivision one of section 11-603 of this subchapter shall be the greater of the tax on entire net income computed under clause one of subparagraph (a) of paragraph E of this subdivision and the fixed dollar minimum tax specified in clause four of subparagraph (a) of paragraph E of this subdivision.

For purposes of this paragraph, for taxable years beginning before January first, two thousand fifteen, any corporation for which an election under subsection (a) of section six hundred sixty of the tax law is not in effect for the taxable year may elect to treat as entire net income the sum of:

(i) entire net income as determined under section two hundred eight of the tax law; and

(ii) any deductions taken for the taxable year in computing federal taxable income for Staten Island city taxes paid or accrued under this chapter.

2. The amount of subsidiary capital, investment capital and business capital shall each be determined by taking the average value of the gross assets included therein, less liabilities deductible therefrom pursuant to the provisions of subdivisions three, four and six of section 11-602 of this subchapter, and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve. For purposes of this subdivision, real property and marketable securities shall be valued at fair market value and the value of personal property other than marketable securities shall be the value

thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles.

3. The portion of the entire net income of a taxpayer to be allocated within the city shall be determined as follows:

(a) multiply its business income by a business allocation percentage to be determined by:

(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property, whether owned or rented to it, within the city during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, wherever situated during such period. For the purpose of this subparagraph, the term "value of the taxpayer's real and tangible personal property" shall mean the adjusted bases of such properties for federal income tax purposes, except that in the case of rented property such value shall mean the product of (A) eight and (B) the gross rents payable for the rental of such property during the taxable year; provided, however, that the taxpayer may make a one-time, revocable election, pursuant to regulations promulgated by the commissioner of finance to use fair market value as the value of all of its real and tangible personal property, provided that such election is made on or before the due date for filing a report under section 11-605 of this subchapter for the taxpayer's first taxable year commencing on or after January first, nineteen hundred eighty-eight and provided that such election shall not apply to any taxable year with respect to which the taxpayer is included on a combined report unless each of the taxpayers included on such report has made such an election which remains in effect for such year;

(2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from:

(A) except as otherwise provided in subparagraph nine of this paragraph, sales of its tangible personal property where shipments are made to points within the city;

(B) services performed within the city, provided, however, that (i) in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from sales of advertising contained in such newspapers and periodicals shall be deemed to arise from services performed within the city to the extent that such newspapers and periodicals are delivered to points within the city, (ii) receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company shall be deemed to arise from services performed within the city to the extent set forth in subparagraph five of this paragraph, (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage, receipts arising from such activity shall be deemed to arise from services performed within the city as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the city and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the city, (iv) for taxable years beginning on or after January first, two thousand two, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, receipts arising from sales

of subscriptions, advertising or broadcasting shall be deemed to arise from services performed within the city to the extent provided in subparagraph nine of this paragraph, and (v) for taxable years beginning after two thousand eight, in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph ten of this paragraph shall be deemed to arise from services performed within the city to the extent set forth in such subparagraph ten;

(C) rentals from property situated and royalties from the use of patents or copyrights, within the city;

(D) all other business receipts earned within the city, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business transactions, whether within or without the city; and

(E) notwithstanding any other provision of this paragraph, net global intangible low-taxed income shall be included in the receipts fraction as provided in this clause. Receipts constituting net global intangible low-taxed income shall not be included in the numerator of the receipts fraction. Receipts constituting net global intangible low-taxed income shall be included in the denominator of the receipts fraction. For purposes of this clause, the term "net global intangible low-taxed income" means the amount that would have been required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section nine hundred fifty-one-A of the internal revenue code less the amount of the deduction that would have been allowed under clause (i) of subparagraph (B) of paragraph one of subdivision (a) of section two hundred fifty of such code if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code;

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees within the city, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the city, except general executive officers; and

(4) adding together the percentages so determined and dividing the result by the number of percentages; provided, however, that for taxable years beginning on or after July first, nineteen hundred ninety-six, a taxpayer that is a "manufacturing corporation," as defined in subparagraph eight of this paragraph, may determine its business allocation percentage as provided in such subparagraph eight; and provided, further, however, that for taxable years beginning before July first, nineteen hundred ninety-six, if the taxpayer does not have a regular place of business outside the city other than a statutory office, the business allocation percentage shall be one hundred per centum.

(5) Rules for receipts from certain services to investment companies. (A) For purposes of subclause (ii) of clause (B) of subparagraph two of this paragraph, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with clause (B) of this subparagraph shall be deemed to arise from services performed within the city, such portion referred to as the Staten Island city portion.

(B) The Staten Island city portion shall be the product of (a) the total of such receipts from the sale of such services and (b) a fraction. The numerator of that fraction is the sum of the monthly percent-

ages, as defined, determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer, but excluding any month during which the investment company had no outstanding shares. The monthly percentage for each such month is determined by dividing (a) the number of shares in the investment company which are owned on the last day of the month by shareholders which are domiciled in the city by (b) the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(C) (i) For purposes of this subparagraph, the term "domicile", in the case of an individual, shall have the meaning ascribed to it under chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of the code of the preceding municipality; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(ii) For purposes of this subparagraph, the term "investment company" means a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, and a partnership to which subdivision (a) of section seven thousand seven hundred four of the internal revenue code applies, by virtue of paragraph three of subdivision (c) of section seven thousand seven hundred four of such code, and that meets the requirements of subdivision (b) of section eight hundred fifty-one of such code. The provisions of this subparagraph shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

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

(iv) For purposes of this subparagraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to subdivision (a) of section fifteen of the federal investment company act of nineteen hundred forty, as amended.

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

(vi) For purposes of this subparagraph, the term "administration services" includes (1) clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only (2) if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined in this paragraph, to such investment company.

(6) (A) Provided, further, however, that a taxpayer principally engaged in the conduct of aviation, other than as provided in clause (C) of this subparagraph, shall, notwithstanding subparagraphs one through five of this paragraph, determine the portion of entire net income to be allocated within the city by multiplying its business income by a business allocation percentage which is equal to the arithmetic average of the following three percentages:

(i) the percentage determined by dividing aircraft arrivals and departures within the city by the taxpayer during the period covered by its report by the total aircraft arrivals and departures within and without the city during such period; provided, however, arrivals and departures solely for maintenance or repair, refueling, where no debarkation or embarkation of traffic occurs, arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner of finance may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster, other than on a scheduled flight; provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above, without regard to remuneration, shall be included in computing such arrival and departure percentage;

(ii) the percentage determined by dividing the revenue tons handled by the taxpayer at airports within the city during such period by the total revenue tons handled by it at airports within and without the city during such period; and

(iii) the percentage determined by dividing the taxpayer's originating revenue within the city for such period by its total originating revenue within and without the city for such period.

(B) As used herein, the term "aircraft arrivals and departures" means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by the aircraft of such taxpayer; the term "originating revenue" means revenue to the taxpayer from the transportation of revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports; and the term "revenue tons handled" by the taxpayer at airports means the weight in tons of revenue passengers, at two hundred pounds per passenger, and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports;

(C) A foreign air carrier described in subparagraph one of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter shall determine its business allocation percentage pursuant to the provisions of subparagraphs one through four of this paragraph, except that the numerators and denominators involved in such computation shall exclude

property to the extent employed in generating income excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, exclude such receipts as are excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter, and exclude wages, salaries or other personal service compensation which are directly attributable to the generation of income excluded from entire net income for the taxable year pursuant to the provisions of paragraph (c-1) of subdivision eight of section 11-602 of this subchapter.

(7) Provided, further, however, that a taxpayer principally engaged in the operation of vessels shall, notwithstanding subparagraphs one through six of this paragraph, determine the portion of entire net income to be allocated within the city by multiplying its business income by a business allocation percentage determined by dividing the aggregate number of working days of the vessels it owns or leases in territorial waters of the city during the period covered by its report by the aggregate number of working days of all the vessels it owns or leases during such period.

(8) (A) For taxable years beginning on or after July first, nineteen hundred ninety-six and before January first, two thousand eleven, a manufacturing corporation may elect to determine its business allocation percentage by adding together the percentages determined under subparagraphs one, two and three of this paragraph and an additional percentage equal to the percentage determined under subparagraph two of this paragraph, and dividing the result by the number of percentages so added together.

(B) An election under this subparagraph must be made on a timely filed, determined with regard to extensions granted, original report for the taxable year. Once made for a taxable year, such election shall be irrevocable for that taxable year. A separate election must be made for each taxable year. A manufacturing corporation that has failed to make an election as provided in this clause shall be required to determine its business allocation percentage without regard to the provisions of this subparagraph. Notwithstanding anything in this clause to the contrary, the commissioner of finance may permit a manufacturing corporation to make or revoke an election under this subparagraph, upon such terms and conditions as the commissioner may prescribe, where the commissioner determines that such permission should be granted in the interests of fairness and equity due to a change in circumstances resulting from an audit adjustment.

(C) As used in this subparagraph, the term "manufacturing corporation" means a corporation primarily engaged in the manufacturing and sale thereof of tangible personal property; and the term "manufacturing" includes the process, including the assembly process, (i) of working raw materials into wares suitable for use or (ii) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. A corporation shall be deemed to be primarily engaged in the activities described in the provisions of this subparagraph if more than fifty percent of its gross receipts for the taxable year are attributable to such activities.

(D) Notwithstanding anything to the contrary, if a taxpayer that is otherwise eligible to make the election authorized by this subparagraph is required or permitted to make a report on a combined basis with one or more other corporations pursuant to subdivision four of section

11-605 of this chapter, the taxpayer shall be permitted to make an election under this subparagraph only if such taxpayer and such other corporation or corporations would be a manufacturing corporation if they were treated as a single corporation. In making such determination, intercorporate transactions shall be eliminated. Where such election has been made by the taxpayer for a taxable year, each of the other corporations included in the combined report shall also be deemed to have made a proper election under this subparagraph for such taxable year.

(9) Special rules for publishers and broadcasters. (A) Notwithstanding anything in subparagraph two of this paragraph to the contrary and except as provided in clause (C) of this subparagraph, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, the gross sales or charges for services arising from sales of advertising contained in such newspapers or periodicals, to the extent that such newspapers or periodicals are delivered to points within the city.

(B) Notwithstanding anything in subparagraph two of this paragraph to the contrary and except as provided in clause (C) of this subparagraph, in the case of a taxpayer engaged in the business of broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, a portion of the gross sales or charges for services arising from the broadcasting of such programs and of commercial messages in connection therewith, such portion to be determined according to the number of listeners or viewers within and without the city.

(C) Notwithstanding anything in clause (A) or (B) of this subparagraph to the contrary, in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, or broadcasting radio or television programs, whether through the public airwaves or by cable, direct or indirect satellite transmission, or any other means of transmission, there shall be allocated to the city, for purposes of subparagraph two of this paragraph, the gross sales or charges to subscribers located in the city for subscriptions to such newspapers, periodicals, or program services. For purposes of this clause, a subscriber shall be deemed located in the city if, in the case of newspapers and periodicals, the mailing address for the subscription is within the city and, in the case of program services, the billing address for the subscription is within the city. For purposes of this clause, "subscriber" shall mean a member of the general public who receives such newspapers, periodicals or program services and does not further distribute them.

(10) Notwithstanding subparagraphs one through five of this paragraph, but subject to subparagraph eight of this paragraph, the business allocation percentage, to the extent that it is computed by reference to the percentages determined under subparagraphs one, two and three of this paragraph, shall be computed in the manner set forth in this subparagraph.

(A) For taxable years beginning in two thousand nine, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of thirty percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of forty percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of thirty percent and the percentage determined under subparagraph three of this paragraph.

(B) For taxable years beginning in two thousand ten, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of twenty-seven percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of forty-six percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of twenty-seven percent and the percentage determined under subparagraph three of this paragraph.

(C) For taxable years beginning in two thousand eleven, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of twenty-three and one-half percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of fifty-three percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of twenty-three and one-half percent and the percentage determined under subparagraph three of this paragraph.

(D) For taxable years beginning in two thousand twelve, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of twenty percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of sixty percent and the percentage determined under subparagraph two of this paragraph, and

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

(E) For taxable years beginning in two thousand thirteen, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of sixteen and one-half percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of sixty-seven percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of sixteen and one-half percent and the percentage determined under subparagraph three of this paragraph.

(F) For taxable years beginning in two thousand fourteen, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of thirteen and one-half percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of seventy-three percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of thirteen and one-half percent and the percentage determined under subparagraph three of this paragraph.

(G) For taxable years beginning in two thousand fifteen, the business allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of eighty percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of ten percent and the percentage determined under subparagraph three of this paragraph.

(H) For taxable years beginning in two thousand sixteen, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of six and one-half percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of eighty-seven percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of six and one-half percent and the percentage determined under subparagraph three of this paragraph.

(I) For taxable years beginning in two thousand seventeen, the business allocation percentage shall be determined by adding together the following percentages:

(i) the product of three and one-half percent and the percentage determined under subparagraph one of this paragraph,

(ii) the product of ninety-three percent and the percentage determined under subparagraph two of this paragraph, and

(iii) the product of three and one-half percent and the percentage determined under subparagraph three of this paragraph.

(J) For taxable years beginning after two thousand seventeen, the business allocation percentage shall be the percentage determined under subparagraph two of this paragraph.

(K) The commissioner shall promulgate rules necessary to implement the provisions of this subparagraph under such circumstances where any of the percentages to be determined under subparagraph one, two or three of this paragraph cannot be determined because the taxpayer has no property, receipts or wages within or without the city.

(11) (A) In the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in items (i) through (vii) of this clause shall be deemed to arise from services performed within the city to the extent set forth in each of such items.

(i) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions.

(ii) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest.

(iii) Gross income, including any accrued interest or dividends, from principal transactions for the purchase or sale of stocks, bonds, foreign exchange and other securities or commodities, including futures and forward contracts, options and other types of securities or commodities derivatives contracts, shall be deemed to arise from services performed within the city either (I) to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of such principal transactions or (II) if the taxpayer so elects, to the extent that the gross proceeds from such principal transactions, determined without deduction for any cost incurred by the taxpayer to acquire the securities or commodities, are generated from sales of securities or commodities to customers within the city based upon the mailing addresses of such customers in the records of the taxpayer. For purposes of subitem (II) of this item, the taxpayer shall separately calculate such gross income from principal transactions by type of security or commodity. For purposes of this item, gross income from principal transactions shall be determined after

the deduction of any cost incurred by the taxpayer to acquire the securities or commodities. For purposes of this subparagraph, the term "production credits" means credits granted pursuant to the internal accounting system used by the taxpayer to measure the amount of revenue that should be awarded to a particular branch or office or employee of the taxpayer which is based, at least in part, on the branch's, the office's or the employee's particular activities. Upon request, the taxpayer shall be required to furnish a detailed explanation of such internal accounting system to the department.

(iv) (I) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer, such customer being the entity which is contemplating issuing or is issuing securities, or fees earned by the taxpayer for managing an underwriting shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees.

(II) Receipts constituting the primary spread or selling concession from underwritten securities shall be deemed to arise from services performed within the city to the extent that production credits are awarded to branches, offices or employees of the taxpayer within the city as a result of the sale of the underwritten securities.

(III) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(v) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to a corporation affiliated with the taxpayer but with which the taxpayer is not permitted or required to file a combined report pursuant to subdivision four of section 11-605 of this subchapter shall be deemed to arise from services performed at the principal place of business of such affiliated corporation.

(vi) Receipts constituting account maintenance fees shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such account maintenance fees.

(vii) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities but excluding fees paid for services described in item (ii) of clause (B) of subparagraph two of this paragraph, shall be deemed to arise from services performed at the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees.

(B) For purposes of this subparagraph, the term "securities" shall have the same meaning as in paragraph two of subdivision (c) of section four hundred seventy-five of the internal revenue code and the term "commodities" shall have the same meaning as in paragraph two of subdivision (e) of section four hundred seventy-five of the internal revenue code. The term "registered securities or commodities broker or dealer" means a broker or dealer registered as such by the securities and

exchange commission or the commodities futures trading commission, and shall include an over-the-counter derivatives dealer as defined under regulations of the securities and exchange commission at title 17, part 240, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

(C) If the taxpayer receives any of the receipts enumerated in clause (A) of this subparagraph as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the items of clause (A) of this subparagraph. The amount of such receipts shall exclude the amount the taxpayer is required to pay to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in clause (A) of this subparagraph as a result of a securities correspondent relationship such taxpayer has with another registered securities or commodities broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to arise from services performed within the city to the extent set forth in each of the items of clause (A) of this subparagraph.

(D) If, for purposes of item (i) or (ii), subitem (I) of item (iv), or item (vi), or (vii) of clause (A) of this subparagraph, the taxpayer is unable from its records to determine the mailing address of the customer, the receipts enumerated in any of such items shall be deemed to arise from services performed at the branch or office of the taxpayer that generates the transaction for the customer that generated such receipts.

(b) multiply its investment income by an investment allocation percentage to be determined by:

(1) multiplying the amount of its investment capital invested in each stock, bond or other security, other than governmental securities, during the period covered by its report by the issuer's allocation percentage of the issuer or obligor thereof.

(i) In the case of an issuer or obligor subject to tax under this subchapter, subchapter three-A or subchapter four of this chapter, or subject to tax as a utility corporation under chapter eleven of this title, the issuer's allocation percentage shall be the percentage of the appropriate measure, which is required to be allocated within the city on the report or reports, if any, required of the issuer or obligor under this title for the preceding year. The "appropriate measure" shall be defined as: in the case of an issuer or obligor subject to this subchapter or subchapter three-A, entire capital; in the case of an issuer or obligor subject to subchapter four of this chapter, issued capital stock; in the case of an issuer or obligor subject to chapter eleven of this title as a utility corporation, gross income.

(ii) In the case of an issuer or obligor subject to tax under part four of subchapter three of this chapter, the issuer's allocation percentage shall be determined as follows:

(A) In the case of a banking corporation described in paragraphs one through eight of subdivision (a) of section 11-640 of this chapter which is organized under the laws of the United States, this state or any other state of the United States, the issuer's allocation percentage shall be its alternative entire net income allocation percentage, as defined in subdivision (c) of section 11-642 of this chapter, for the preceding year. In the case of such a banking corporation whose alterna-

tive entire net income for the preceding year is derived exclusively from business carried on within the city, its issuer's allocation percentage shall be one hundred percent.

(B) In the case of a banking corporation described in paragraph two of subdivision (a) of section 11-640 of this chapter which is organized under the laws of a country other than the United States, the issuer's allocation percentage shall be determined by dividing (I) the amount described in clause (i) of subparagraph (A) of paragraph two of subdivision (a) of section 11-642 of this chapter with respect to such issuer or obligor for the preceding year, by (II) the gross income of such issuer or obligor from all sources within and without the United States, for such preceding year, whether or not included in alternative entire net income for such year.

(C) In the case of an issuer or obligor described in paragraph nine of subdivision (a) or in paragraph two of subdivision (d) of section 11-640 of this chapter, the issuer's allocation percentage shall be determined by dividing the portion of the entire capital of the issuer or obligor allocable to the city for the preceding year by the entire capital, wherever located, of the issuer or obligor for the preceding year.

(iii) Provided, however, that if a report or reports for the preceding year are not filed, or if filed do not contain information which would permit the determination of such issuer's allocation percentage, then the issuer's allocation percentage to be used shall, at the discretion of the commissioner of finance, be either (A) the issuer's allocation percentage derived from the most recently filed report or reports of the issuer or obligor or (B) a percentage calculated, by the commissioner of finance, reasonably to indicate the degree of economic presence in the city of the issuer or obligor during the preceding year.

(2) adding together the sum so obtained, and

(3) dividing the result so obtained by the total of its investment capital invested during such period in stocks, bonds and other securities; provided, however, that in case any investment capital is invested in any stock, bond or other security during only a portion of the period covered by the report, only such portion of such capital shall be taken into account; and provided further, that if a taxpayer's investment allocation percentage is zero, interest received on bank accounts shall be multiplied by its business allocation percentage; and

(c) add the products so obtained.

(d) Except as provided in subparagraph three of this paragraph or in paragraph (e) of this subdivision, at the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the city either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in subparagraph three of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation of the same property, and the total of all deductions allowed in any taxable year or years with respect to the depreciation of any such property shall not exceed its cost or other basis.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in subparagraph three of this paragraph which is used or to be used for purposes of research and development in the exper-

imental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deduction shall be allowed only on condition that entire net income for the taxable year and all succeeding taxable years be computed without the deduction of any such expenditures and without any deduction for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subparagraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, a proportionate part of such expenditures shall be deductible. If all or part of such expenditures with respect to any property shall have been deducted as provided in this subparagraph, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation regardless of the time limitations set forth in section 11-674 of this chapter.

(3) Such deductions shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in the city and commenced after December thirty-first, nineteen hundred sixty-five, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraphs four,

five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clauses (A), (B) or (C) of this subparagraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under this paragraph with respect to tangible personal property leased by it to any other person or corporation. Accordingly, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under this paragraph in proportion to the part of the year it uses such property.

(4) If the deductions allowable for any taxable year, pursuant to this subdivision, exceed the portion of the taxpayer's entire net income allocated to the city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to the city for such year or years.

(5) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of this paragraph, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of this paragraph. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

(e) At the election of the taxpayer there shall be deducted from the portion of its entire net income allocated within the city either or both of the items set forth in subparagraphs one and two of this paragraph, except that only one of such deductions shall be allowed with respect to any one item of property.

(1) Depreciation with respect to any property such as described in subparagraphs three and four of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for the depreciation of the same property, and the total of all deductions allowed in any taxable year or years with respect to the depreciation of any such property shall not exceed its cost or other basis multiplied by the taxpayer's business allocation percentage determined under this subdivi-

sion for the first year it deducts such depreciation under this paragraph.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in subparagraph three of this paragraph which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such deductions shall be allowed only on condition that it does not exceed the amount of the expenditures multiplied by the taxpayer's business allocation percentage determined under this subdivision for the year the expenditures are paid or incurred and that entire net income for the taxable year and all succeeding taxable years be computed without the deduction of any such expenditures and without any deduction for depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this subparagraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years. With respect to property which is used or to be used for research and development only in part, or during only part of its useful life, a proportionate part of such expenditures shall be deductible. If all or part of such expenditures with respect to any property shall have been deducted as provided in this subparagraph, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation regardless of the time limitations set forth in section 11-674 of this chapter.

(3) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (B) acquired after December thirty-first, nineteen hundred sixty-seven by purchase or defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first nineteen hundred sixty-five. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under this paragraph with respect to tangible personal property leased by it to any other person or corporation. Accordingly, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leas-

ing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under this paragraph in proportion to the part of the year it uses such property.

(4) A deduction under subparagraph one of this paragraph shall be allowed with respect to tangible property described in subparagraph three only if such property is principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture or commercial fishing. For purposes of this subparagraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under paragraph (g) of subdivision eight of section 11-602 of this subchapter may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing, in which event, a deduction shall not be allowed under such paragraph (g).

(5) Subject to the limitation imposed by subparagraphs one and two of this paragraph, if the deductions allowable for any taxable year, pursuant to this subdivision, exceed the portion of the taxpayer's entire net income allocated to the city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to the city for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of this paragraph, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of this paragraph. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

4. The portion of the business capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the business allocation percentage determined as provided for in this subdivision. Provided, however, such business allocation percentage, for purposes of allocating business capital, shall (a) for taxable years beginning before nineteen hundred ninety-four, be determined without regard to clause (C) of subparagraph six of paragraph (a) of subdivision three of this section and (b) for taxable years beginning after nineteen

hundred ninety-three, be determined with regard to such clause (C) but only in the case of a taxpayer subject to the provisions of paragraph (b) of subdivision six of section 11-602 of this subchapter.

5. The portion of the investment capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the investment allocation percentage determined as provided in this subdivision.

7. The portion of the subsidiary capital of a taxpayer to be allocated within the city shall be determined by (a) multiplying the amount of its subsidiary capital invested in each subsidiary during the period covered by its report, or, in the case of any such capital so invested during only a portion of such period, such portion of such capital, by the issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of this section, of each such subsidiary and (b) adding together the sums so obtained.

8. If it shall appear to the commissioner of finance that any business or investment allocation percentage determined as provided in this subdivision does not properly reflect the activity, business, income or capital of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values, minus subcontract values, (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

9. If it shall appear to the commissioner of finance that any business allocation percentage determined as provided in subdivisions one through eight of this section does not properly reflect the activity, business, income or capital of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values, minus subcontract values, (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom, is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city, and in the case of an investment allocation percentage, to adjust it by excluding one or more assets in computing such percentage provided the income therefrom is also excluded in determining entire net income. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

11. (a) A taxpayer shall be allowed a credit, to be refunded in the manner as provided in this subdivision, against the tax imposed by this chapter. The amount of such credit shall be fifty percent of the tax incurred in market making transactions under the provisions of article twelve of the tax law on such transactions subject to such tax occurring

on and after August first, nineteen hundred seventy-six and paid by such taxpayer, except when such tax shall have been paid pursuant to section two hundred seventy-nine-a of such tax law.

(b) For purposes of this subdivision:

(1) the term "taxpayer" shall mean any corporation subject to tax under this chapter registered with the United States securities and exchange commission in accordance with subsection (b) of section fifteen of the securities exchange act of nineteen hundred thirty-four, as amended, and acting as a dealer in a transaction described in subparagraph two of this paragraph, and

(2) the term "market making transaction" shall mean any transaction involving a sale, including a short sale, by a dealer of shares or certificates subject to the tax imposed by article twelve of the tax law, provided such shares or certificates are sold:

(i) as stock in trade or inventory or as property held for sale in the ordinary course of such dealer's trade or business, including transfers which are part of an underwriting,

(ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge transaction involving a long or short position in any equity security and a long or short position in a security entitling the holder to acquire or sell such equity security; or (c) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, recapitalization, reorganization, or similar transaction, or

(iii) to offset a transaction made in error.

Provided, however, that, except as to subclause (c) of clause (ii) of this paragraph, the term "market making transaction" shall not include any sale of shares or certificates identified in such dealer's records as a security held for investment within the meaning of section twelve hundred thirty-six of the internal revenue code.

(c) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-677 of this chapter, except as otherwise provided in subdivision three of section 11-606 and subdivision eleven of section 11-608; provided, however, that the provisions of this title notwithstanding, the amount to be refunded pursuant to this subdivision shall not be paid prior to the first day of the eighth month following the close of the taxable year, and the provisions of subdivision three of section 11-679 of this chapter notwithstanding interest shall be allowed and paid on the overpayment of the credit under this subdivision from the first day of the eleventh month following the close of the taxable year, or three months after a claim for the credit or refund provided for in this subdivision has been filed, whichever is later.

(d) Provided, however, that the credit provided under this subdivision shall be allowed only to the extent that the amount of credit allowable with respect to market making transactions under the provisions of this subdivision, determined without regard to the provisions of this paragraph, exceeds fifty percent of all rebates, provided for under the provisions of section two hundred eighty-a of the tax law, allowed for such taxes incurred in the same market making transactions with respect to which the credit is determined. No credit shall be allowed under this subdivision with respect to any tax incurred in market making transactions occurring on or after October first, nineteen hundred eighty-one.

12. (a) In addition to the credit allowed by subdivision eleven of this section, a taxpayer shall be allowed a credit against the tax

imposed by this subchapter to be credited or refunded in the manner provided in this section. The amount of such credit shall be the excess of (A) the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year which became legally due on or after and was paid on or after July first, nineteen hundred seventy-seven, less any credits or refunds of such taxes, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus over (B) the amount of any credit for such sales and compensating use taxes allowed or allowable against the taxes imposed by subchapter two of chapter eleven of this title for any periods embraced within the taxable year of the taxpayer under this subchapter.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

(c) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer had claimed a credit under the provisions of this subdivision in a prior taxable year, the amount of such tax refund shall be added to the tax imposed by subdivision one of section 11-603 of this subchapter, and such amount shall be subtracted in computing entire net income for the taxable year.

13. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner provided in this section.

(1) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities; and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board shall be entitled to a credit against the tax imposed by this subchapter. The amount of such credit shall be: An amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this subchapter.

The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive the tax credit provided for in this subdivision shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest".

In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city.

The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation whichever period is shorter.

(2) When used in this section, the following terms shall have the following meanings:

(i) "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

(ii) "Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

(iii) "Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

(iv) "Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

(v) "Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employees is not less than thirty hours during any given work week.

(vi) "Industrial and commercial incentive board" means the board created pursuant to part three of subchapter two of chapter two of this title.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

14. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner provided in this section. The amount of such credit shall be:

(1) A maximum of three hundred dollars for each commercial employment opportunity and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. Such credit may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event, provided, however, no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (A) that are within an industrial business zone established pursuant to section 22-626 of this code and (B) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used by a taxpayer seeking such credit.

(2) When used in this section: (i) "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

(ii) "Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

(iii) "Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

(iv) "Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

(v) "Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

(vi) "Employment opportunity relocation costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving and installation of machinery and equipment into the city from a location outside the state; the costs of installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(b) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest in accordance with the provisions of section 11-677 of this chapter.

17. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the preceding municipality code shall be allowed a credit against the tax imposed by this subchapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivi-

sion (j) of section 22-621 of the code of the preceding municipality is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code of the preceding municipality to take such credit against a gross receipts tax imposed by chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code of the preceding municipality. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(c) The credit allowable under this subdivision shall be deducted after the credit allowed by subdivision eighteen of this section, but prior to the deduction of any other credit allowed by this section.

(d) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code of the preceding municipality dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph (a) of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

17-a. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded in the manner provided in this subdivision. The amount of such credit shall be equal to the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law during the taxpayer's taxable year, and the amount of any interest imposed in connection therewith, which was paid after January first, nineteen hundred ninety-five, less any credit or refund of such taxes, or such interest, with respect to the purchase or use by the taxpayer of the services described in subdivision (b) of section eleven hundred five-b of the tax law.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

(c) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law, or of any interest imposed in connection therewith, for which the taxpayer had claimed a credit under the provisions of this subdivision in a prior taxable year, the amount of such tax, or such interest, refund or credit shall be added to the tax imposed by subdivision one of section 11-603 of this subchapter, and such amount shall be subtracted in computing entire net income for the taxable year.

17-b. (a) For taxable years beginning on or after January first, two thousand six, in addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this subchapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(b) When used in this subdivision, the following terms shall have the following meanings:

(i) "Eligible business" means any business subject to tax under this subchapter that (1) has been conducting substantial business operations

and engaging primarily in industrial and manufacturing activities at one or more locations within the city of Staten Island or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (2) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (3) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (4) will be engaged primarily in industrial and manufacturing activities at such eligible premises.

(ii) "Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises.

(iii) "Full-time employee" means (1) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (2) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by each such person is more than fifteen hours per week but less than thirty-five hours per week.

(iv) "Industrial business zone" means an area within the city of Staten Island established pursuant to section 22-626 of the code of the preceding municipality.

(v) "Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this subchapter.

(vi) "Industrial and manufacturing activities" means activities involving the assembly of goods to create a different article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services.

(vii) "Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (1) the date of the completion of the relocation to the eligible premises or (2) ninety days from the commencement of the relocation to the eligible premises, whichever is earlier.

(viii) "Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include costs for structural or capital improvements or items purchased in connection with the relocation.

(c) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-677 of this chapter.

(d) The number of full-time employees for the purposes of calculating an industrial business tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible

premises by the eligible business in the fifty-two week period immediately following the earlier of (1) the date of the completion of the relocation to eligible premises or (2) ninety days from the commencement of the relocation to the eligible premises.

(e) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such twelve-month period selected by the taxpayer ends.

(f) For the purposes of calculating entire net income in the taxable year that an industrial business tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(g) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation, provided, however, an industrial business tax credit shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of the code of the preceding municipality, through a grant program administered by the business relocation assistance corporation, or through the New York city printers relocation fund grant.

(h) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

18. (a) If a corporation is a partner in an unincorporated business taxable under chapter five of this title, and is required to include in entire net income its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such corporation shall be allowed a credit against the tax imposed by this subchapter equal to the lesser of the amounts determined in subparagraphs one and two of this paragraph:

(1) The amount determined in this subparagraph is the product of (A) the sum of (i) the tax imposed by chapter five of this title on the unincorporated business for its taxable year ending within or with the taxable year of the corporation and paid by the unincorporated business and (ii) the amount of any credit or credits taken by the unincorporated business under section 11-503 of this title, except the credit allowed by subdivision (b) of such section, for its taxable year ending within or with the taxable year of the corporation, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (B) a fraction, the numerator of which is the net total of the corporation's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(2) The amount determined in this subparagraph is the product of (A) the excess of (i) the tax computed under clause one of subparagraph (a) of paragraph E of subdivision one of this section, without allowance of any credits allowed by this section, over (ii) the tax so computed, determined as if the corporation had no such distributive share or guaranteed payments with respect to the unincorporated business, and (B) a fraction, the numerator of which is four and the denominator of which is eight and eighty-five one-hundredths, provided, however, that the amounts computed in clauses (i) and (ii) of this subparagraph shall be computed with the following modifications:

(I) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss;

(II) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the entire net income of the partner is less than zero, such entire net income shall be treated as zero; and

(III) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero. The amount determined in this subparagraph shall not be less than zero.

(b)(1) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, in the case of a corporation that, before the application of this subdivision or any other credit allowed by this section, is liable for the tax on entire net income under clause one of subparagraph (a) 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. 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. Accordingly, 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) Notwithstanding anything to the contrary in paragraph (a) of this subdivision, in the case of a corporation that, before the application of this subdivision or any other credit allowed by this section, is liable for the tax on entire net income plus certain salaries and other compensation under clause three of subparagraph (a) of paragraph E of subdivision one of this section, the maximum credit that may be taken in any taxable year is the amount that will reduce the tax so computed, without allowance of any credits allowed by this section, to zero. For purposes of this paragraph each dollar of credit shall be applied so as to reduce such tax for taxable years beginning before January first, two thousand seven by sixty-six and thirty-eight one-hundredths cents; for taxable years beginning on or after January first, two thousand seven and before January first, two thousand eight by fifty-eight and eight one-hundredths cents; for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine by forty-nine and seventy-eight one-hundredths cents; for taxable years beginning on or after January first, two thousand nine and before January first, two thousand ten by forty-one and forty-eight one-hundredths cents; and for taxable years beginning on or after January first, two thousand ten by thirty-three and nineteen one-hundredths cents. If the amount of credit allowed under this subdivision or the sum of such credits exceeds the amount that may be taken against such tax, 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. Accordingly,

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.

(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 and investment capital under clause two of subparagraph (a) of paragraph E of subdivision one of this section or the fixed-dollar minimum tax under clause four of subparagraph (a) of paragraph E of subdivision one of this section. No credit allowed under this subdivision may be taken against the tax computed on the basis of subsidiary capital under subparagraph (b) of paragraph E of subdivision one of this section.

(c) For corporations that file a report on a combined basis pursuant to subdivision four of section 11-605 of this chapter, 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 of the fraction described in clause (B) of such subparagraph one shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all of the partners of the unincorporated business within the combined group for which such net total, as separately determined for each partner, is greater than zero, and the denominator of such fraction shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(d) The credit allowed by this subdivision shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under chapter five of this title for any taxable year beginning before July first, nineteen hundred ninety-four.

(e) Notwithstanding any other provision of this subchapter, the credit allowable under this subdivision shall be taken prior to the taking of any other credit allowed by this section. Notwithstanding any other provision of this subchapter, the application of this subdivision shall not change the basis on which the taxpayer's tax is computed under paragraph E of subdivision one of this section.

19. Lower Manhattan relocation and employment assistance credit. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code of the preceding municipality to take such

credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares," "eligible premises," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code of the preceding municipality.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(c) Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(d) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(e) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions seventeen and eighteen of this section, but prior to the deduction of any other credit allowed by this section.

20. Film production credit. (a)(1) allowance of credit. A taxpayer which is a qualified film production company, and which is subject to tax under this subchapter, shall be allowed a credit against such tax, pursuant to the provisions in paragraph (c) of this subdivision, to be computed as provided in this subdivision.

(2) The amount of the credit shall be the product of five percent and the qualified production costs paid or incurred in the production of a qualified film, provided that the qualified production costs, excluding post production costs, paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of such qualified film equal or exceed seventy-five percent of the production costs, excluding post production costs, paid or incurred which are attributable to the use of tangible property or the performance of services at any film production facility within and without the city of Staten Island in the production of such qualified film. However, if the qualified production costs, excluding post production costs, which are attributable to the use of tangible property or the performance of services at a qualified film

production facility in the production of such qualified film are less than three million dollars, then the portion of the qualified production costs attributable to the use of tangible property or the performance of services in the production of such qualified film outside of a qualified film production facility shall be allowed only if the shooting days spent in the city of Staten Island outside of a film production facility in the production of such qualified film equal or exceed seventy-five percent of the total shooting days spent within and without the city of Staten Island outside of a film production facility in the production of such qualified film. The credit shall be allowed for the taxable year in which the production of such qualified film is completed.

(3) No qualified production costs used by a taxpayer either as the basis for the allowance of the credit provided for under this subdivision or used in the calculation of the credit provided for under this subdivision shall be used by such taxpayer to claim any other credit allowed pursuant to this title.

(b) Definitions. As used in this subdivision, the following terms shall have the following meanings:

(1) "Qualified production costs" means production costs only to the extent such costs are attributable to the use of tangible property or the performance of services within the city of New York directly and predominantly in the production, including pre-production and post production, of a qualified film.

(2) "Production costs" means any costs for tangible property used and services performed directly and predominantly in the production, including pre-production and post production, of a qualified film. "Production costs" shall not include (i) costs for a story, script or scenario to be used for a qualified film and (ii) wages or salaries or other compensation for writers, directors, including music directors, producers and performers, other than background actors with no scripted lines. "Production costs" generally include technical and crew production costs, such as expenditures for film production facilities, or any part thereof, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.

(3) "Qualified film" means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot or episode is created or conveyed. "Qualified film" shall not include (i) a documentary film, news or current affairs program, interview or talk program, "how-to" (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fundraising film or program, daytime drama (i.e., daytime "soap opera"), commercials, music videos or "reality" program, or (ii) a production for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production, reporting of books, films, etc. with respect to sexually explicit conduct.

(4) "Film production facility" shall mean a building and/or complex of buildings and their improvements and associated back-lot facilities in which films are or are intended to be regularly produced and which contain at least one sound stage.

(5) "Qualified film production facility" shall mean a film production facility in the city of Staten Island, which contains at least one sound

stage having a minimum of seven thousand square feet of contiguous production space.

(6) "Qualified film production company" shall mean a corporation which is principally engaged in the production of a qualified film and controls the qualified film during production.

(c) Application of credit. (1) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in clause four of subparagraph (a) of paragraph E of subdivision one of this section. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, the provisions of section 11-679 of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be credited against the taxpayer's tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter. Provided, however, the provisions of section 11-679 of this chapter notwithstanding, no interest shall be paid thereon.

(2) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

21. Biotechnology credit. (a) (1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs three, four, and five of this paragraph, subject to the limitations in subparagraph seven of this paragraph and paragraph (b) of this subdivision. For the purposes of this subdivision, "qualified emerging technology company" shall mean a company located in a city: (A) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or (B) a company that has research and development activities in city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, "biotechnologies" shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic

switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (A) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (B) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (C) have gross revenues, along with the gross revenues of its "affiliates" and "related members" not exceeding twenty million dollars for the calendar year immediately preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "affiliates" shall mean those corporations that are members of the same affiliated group, as defined in section fifteen hundred four of the internal revenue code, as the taxpayer. For the purposes of this subdivision, the term "related members" shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters five, eleven and seventeen of this title, and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in subdivision (d) of section one hundred seventy-nine of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (A) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (B) the costs or expenses associated with quality control of the research and development, (C) fees for use of sophisticated technology facilities and processes, and (D) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under this subchapter. For the purposes of this subdivision, "research and development property" shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials

or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year that ends with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "qualified research expenses" shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this subparagraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this subparagraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(A) The amount of credit shall be one hundred percent of the training expenses described in clause (C) of this subparagraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(B) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in a city that (i) directly relates to biotechnology activities, and (ii) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(C) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by

this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(D) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in clause (C) of this subparagraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (i) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (ii) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in clause (C) of this subparagraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(E) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(F) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in city. An academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management

assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred fifty thousand dollars per calendar year for eligible expenditures made during such calendar year.

(7) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in clause four of subparagraph (a) of paragraph E of subdivision one of this section. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, that notwithstanding the provisions of section 11-679 of this chapter, no interest shall be paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning on or after January first, two thousand ten and before January first, two thousand nineteen.

(b) (1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(A) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was, (i) located outside of the city, (ii) not doing business, or (iii) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(B) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty-five thousand dollars per calendar year. In the case of an entity located in city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

(3) For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during

each calendar year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such calendar year or other applicable period.

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

22. Beer production credit. (a) A taxpayer subject to tax under this subchapter, that is registered as a distributor under article eighteen of the tax law, and that produces sixty million or fewer gallons of beer in this state in the taxable year, shall be allowed a credit against the tax imposed by this subchapter in the amount specified in paragraph (b) of this subdivision. Provided, however, that no credit shall be allowed for any beer produced in excess of fifteen million five hundred thousand gallons in the taxable year. Notwithstanding anything in this title to the contrary, if a partnership is allowed a credit under subdivision (p) of section 11-503 of this title, a taxpayer that is a partner in such partnership shall not be allowed a credit under this subdivision for any taxable year that includes the last day of the taxable year for which the partnership is allowed such credit.

(b) The amount of the credit per taxpayer per taxable year for each gallon of beer produced in the city of New York on or after January first, two thousand seventeen shall be determined as follows:

(1) for the first five hundred thousand gallons of beer produced in the city of New York in the taxable year, the credit shall equal twelve cents per gallon; and

(2) for each gallon of beer produced in the city of New York in the taxable year in excess of five hundred thousand gallons, the credit shall equal three and eighty-six one-hundredths cents per gallon. In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year to less than the amount prescribed in clause four of subparagraph (a) of paragraph E of subdivision one of this section. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, that notwithstanding the provisions of section 11-679 of this chapter, no interest shall be paid thereon.

23. Credit for the provision of child care. In addition to any other credit allowed under this section, a taxpayer whose application for a credit authorized by section 11-144 of this title has been approved by the department of finance shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be determined as provided in such section. To the extent the amount of the credit allowed by this subdivision exceeds the amount of tax due pursuant to this subchapter, as calculated without such credit, such excess amount shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter, provided, however, that notwithstanding the requirements of section 11-679 of this chapter to the contrary, no interest shall be paid thereon.

§ 11-605 Reports. 1. Every corporation having an officer, agent or representative within the city, shall annually on or before March fifteenth, transmit to the commissioner of finance a report in a form prescribed by the commissioner, except that a corporation which reports

on the basis of a fiscal year shall transmit its report within two and one-half months after the close of its fiscal year, setting forth such information as the commissioner of finance may prescribe and every taxpayer which ceases to do business in the city or to be subject to the tax imposed by this subchapter shall transmit to the commissioner of finance a report on the date of such cessation or at such other time as the commissioner may require covering each year or period for which no report was theretofore filed. Every taxpayer shall also transmit such other reports and such facts and information as the commissioner of finance may require in the administration of this subchapter. The commissioner of finance may grant a reasonable extension of time for filing reports whenever good cause exists.

With respect to taxable years ending prior to December thirty-first, nineteen hundred sixty-six, the returns required to be made and filed pursuant to this section shall be made and filed on or before the fifteenth day of the third month following the close of such taxable year or September eleventh, nineteen hundred sixty-six, whichever is later.

An automatic extension of six months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by either of the preceding paragraphs, whichever is applicable, such taxpayer files with the commissioner of finance an application for extension in such form as the commissioner may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or another officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. In the case of an association, within the meaning of paragraph three of section (a) of section seventy-seven hundred one of the internal revenue code, a publicly-traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments, such certification shall be made by any person duly authorized so to act on behalf of such association, publicly-traded partnership or business. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the commissioner of finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this subchapter.

2-a. The commissioner of finance may prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to this section, relating to payments made to shareholders owning, directly or indirectly, individually or in the aggregate, more than fifty percent of the issued capital stock of the taxpayer, where such payments are treated as payments of interest in the computation of entire net income reported on such reports.

3. If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer, or of any shareholder of any taxpayer which has elected to be taxed under subchapter s of chapter one of the internal revenue code or of any shareholder of any

taxpayer with respect to which an election has been made to be treated as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, as returned to the United States treasury department or the New York state commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state commissioner of taxation and finance or other competent authority, or where a renegotiation of a contract or subcontract with the United States or the state of New York results in a change in taxable income, alternative minimum taxable income or other basis of tax, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States or the state of New York, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, or such shareholder of a taxpayer, pursuant to subsection (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subsection (c) of said section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax, or the results of such renegotiation, or such computation, or recomputation, or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days, or one hundred twenty days, in the case of a taxpayer making a combined report under this subchapter for such year, after such execution or the final determination of such change or correction or renegotiation, or such computation, or recomputation, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended report with the commissioner of finance.

4. (a) Any taxpayer which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, hereinafter referred to in this paragraph as "related corporations", shall make a combined report covering any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions. It is not necessary that there be substantial intercorporate transactions between any one corporation and every other related corporation. It is necessary, however, that there be substantial intercorporate transactions between the taxpayer and a related corporation or, collectively, a group of such related corporations. The report shall set forth such information as the commissioner of finance may require.

In determining whether there are substantial intercorporate transactions, the commissioner shall consider and evaluate all activities and

transactions of the taxpayer and its related corporations. Activities and transactions that will be considered include, but are not limited to: manufacturing, acquiring goods or property, or performing services, for related corporations; selling goods acquired from related corporations; financing sales of related corporations; performing related customer services using common facilities and employees for related corporations; incurring expenses that benefit, directly or indirectly, one or more related corporations; and transferring assets, including such assets as accounts receivable, patents or trademarks from one or more related corporations.

(1) No taxpayer may be permitted to make a report on a combined basis covering any such other corporations where such taxpayer or any such other corporation allocates in accordance with clause (A) of subparagraph six of paragraph (a) of subdivision three of section 11-604 of this subchapter and such taxpayer or any such other corporation does not so allocate.

(2) No taxpayer may be permitted to make a report on a combined basis covering any such other corporations where such taxpayer or any such other corporation allocates in accordance with subparagraph seven of paragraph (a) of subdivision three of section 11-604 of this subchapter and such taxpayer or any such other corporation does not so allocate.

(3) Except as provided in the first undesignated paragraph of this subdivision, no combined report covering any corporation not a taxpayer shall be required unless the commissioner of finance deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this subchapter.

(4) A corporation organized under the laws of a country other than the United States shall not be required or permitted to make a report on a combined basis.

(5)(i) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this subchapter or otherwise required to be included in a combined report under this subchapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined report with the corporation that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that corporation is subject to tax or required to be included in a combined report under this subchapter.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a corporation that is subject to tax or required to be included in a combined report under this subchapter, then the captive REIT or captive RIC must be included in a combined report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is subject to tax or otherwise required to be included in a combined report under this subchapter, then the captive REIT or captive RIC must be included in a combined report under this subchapter.

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

(v) If a captive REIT owns the stock of a qualified REIT subsidiary, as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code, then the qualified REIT subsidiary must be included in a combined report with the captive REIT.

(vi) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined report with another corporation, and that other corporation is also required to be included in a combined report with another related corporation or corporations under this paragraph, then the captive REIT or the captive RIC must be included in that combined report with those corporations.

(vii) If a captive REIT or a captive RIC is not required to be included in a combined report with another corporation under clause (ii) or (iii) of this subparagraph, or in a combined return under the provisions of subparagraph (v) of paragraph two of subdivision (f) of section 11-646 of this chapter, then the captive REIT or captive RIC is subject to the opening provisions of this paragraph and the provisions of subparagraph three of this paragraph. The captive REIT or captive RIC must be included in a combined report under this subchapter with another corporation if either the substantial intercorporate transactions requirement in the opening provisions of this paragraph or the intercompany transactions or agreement, understanding, arrangement or transaction requirement of subparagraph three of this paragraph is satisfied and more than fifty percent of the voting stock of the captive REIT or the captive RIC and substantially all of the capital stock of that other corporation are owned and controlled, directly or indirectly, by the same corporation.

(b)(1)(i) In the case of a combined report the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the report, including any captive REIT or captive RIC; provided, however, in no event shall the tax measured by combined capital exceed the limitation provided for in paragraph F of subdivision one of section 11-604 of this subchapter.

(ii) In the case of a captive REIT or captive RIC required under this subdivision to be included in a combined report, entire net income must be computed as required under subdivision seven, in the case of a captive REIT, or subdivision eight, in the case of a captive RIC, of section 11-603 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 not be allowed for taxable years beginning on or after January first, two thousand nine. The term "affiliated group" means "affiliated group" as defined in section fifteen

hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(2) In computing combined entire net income intercorporate dividends shall be eliminated, in computing combined business and investment capital intercorporate stock holdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated.

5. 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 capital of the taxpayer within the city is improperly or inaccurately reflected, the commissioner of finance is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided only that any income directly traceable thereto be also excluded from entire net income, so as equitably to determine the tax. Where (a) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (b) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the commissioner of finance may include in the entire net income of the taxpayer the fair profits, which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

6. An action may be brought at any time by the corporation counsel at the instance of the commissioner of finance to compel the filing of reports due under this subchapter.

7. Reports shall be preserved for five years, and thereafter until the commissioner of finance orders them to be destroyed.

8. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 11-606 Payment and lien of tax. 1. To the extent the tax imposed by section 11-603 of this subchapter shall not have been previously paid pursuant to section 11-608 of this subchapter,

(a) such tax, or the balance thereof, shall be payable to the commissioner of finance in full at the time the report is required to be filed, and

(b) such tax, or the balance thereof, imposed on any taxpayer which ceases to do business in the city or to be subject to the tax imposed by this subchapter shall be payable to the commissioner of finance at the

time the report is required to be filed; all other taxes of any such taxpayer, which pursuant to the provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time.

If the taxpayer, within the time prescribed by section 11-605 of this subchapter, shall have applied for an automatic extension of time to file its annual report and shall have paid to the commissioner of finance on or before the date such application is filed an amount properly estimated as provided by said section, the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount by which the tax, or the portion thereof payable on or before the date the report was required to be filed, exceeds the amount so paid. For purposes of this paragraph:

(1) an amount so paid shall be deemed properly estimated if it is either: (A) not less than ninety percent of the tax as finally determined, computed without regard to any credit allowable under subdivision eleven of section 11-604 of this subchapter, or (B) not less than the tax shown, computed without regard to any credit allowable under subdivision eleven of section 11-604 of this subchapter, on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

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

2. The commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this subchapter under such conditions as it deems just and proper.

3. Subdivision one of this section shall apply to a taxpayer which has a right to a credit pursuant to subdivision eleven of section 11-604 of this subchapter, except that the tax, or balance thereof, payable to the commissioner of finance in full pursuant to subdivision one of this section, at the time the report is required to be filed, shall be calculated and paid at such time as if the credit provided for in subdivision eleven of section 11-604 of this subchapter were not allowed.

§ 11-607 Declaration of estimated tax. 1. Every taxpayer subject to the tax imposed by section 11-603 of this subchapter shall make a declaration of its estimated tax for the current privilege period, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by section 11-603 of this subchapter for the current privilege period, less the amount which it estimates to be the sum of any credits allowable against the tax other than the credit allowable under subdivision eleven of section 11-604 of this subchapter.

3. In the case of a taxpayer which reports on the basis of a calendar year, a declaration of estimated tax shall be filed on or before June fifteenth of the current privilege period, except that if the requirements of subdivision one are first met:

(a) after May thirty-first and before September first of such current privilege period, the declaration shall be filed on or before September fifteenth, or

(b) after August thirty-first and before December first of such current privilege period, the declaration shall be filed on or before December fifteenth.

4. A taxpayer may amend a declaration under regulations of the commissioner of finance.

5. If, on or before February fifteenth of the succeeding year in the case of a taxpayer which reports on the basis of a calendar year, a taxpayer files its report for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the report,

(a) such report shall be considered as its declaration if no declaration is required to be filed during the calendar or fiscal year for which the tax was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to subdivision three of this section, and

(b) such report shall be considered as the amendment permitted by subdivision four of this section to be filed on or before December fifteenth if the tax shown on the report is greater than the estimated tax shown on a declaration previously made.

6. This section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

7. If the privilege period for which a tax is imposed by section 11-603 of this subchapter is less than twelve months, every taxpayer required to make a declaration of estimated tax for such privilege period shall make such a declaration in accordance with regulations of the commissioner of finance.

8. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as it may require.

§ 11-608 Payments on account of estimated tax. 1. Every taxpayer subject to the tax imposed by section 11-603 of this subchapter shall pay with the report required to be filed for the preceding privilege period, if any, or with an application for extension of the time and filing such report, an amount equal to twenty-five per centum of the preceding year's tax, computed without regard to the credit provided for in subdivision twelve of section 11-604 of this subchapter, if such preceding year's tax exceeded one thousand dollars.

2. The estimated tax with respect to which a declaration for such privilege period is required shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(b) If the declaration is filed after June fifteenth and not after September fifteenth of such privilege period, and is not required to be filed on or before June fifteenth of such period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(c) If the declaration is filed after September fifteenth of such privilege period, and is not required to be filed on or before September

fifteenth of such privilege period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect to such privilege period pursuant to subdivision one of this section, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

3. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the privilege period, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

4. Any amount paid shall be applied after payment as a first installment against the estimated tax of the taxpayer for the current privilege period shown on the declaration required to be filed pursuant to section 11-607 of this subchapter or, if no declaration of estimated tax is required to be filed by the taxpayer to such section, any such amount shall be considered a payment on account of the tax shown on the report required to be filed by the taxpayer for such privilege period.

5. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if an amount paid pursuant to subdivision one of this section exceeds the tax shown on the report required to be filed by the taxpayer for the privilege period during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of four percent per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the privilege period, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a carryback of a net operating loss in a subsequent privilege period.

6. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by section 11-603 of this subchapter for the preceding calendar or fiscal year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the report required to be filed for such preceding calendar or fiscal year, the amount properly estimated pursuant to section 11-607 of this subchapter as the tax imposed upon the taxpayer for such calendar or fiscal year.

7. This section shall apply to a privilege period of less than twelve months in accordance with regulations of the commissioner of finance.

8. The provisions of this section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

9. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and condi-

tions as the commissioner may require including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however that interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

10. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

11. The portion of an overpayment attributable to a credit allowable pursuant to subdivision eleven of section 11-604 of this subchapter may not be credited against any payment due under this section.

§ 11-609 Collection of taxes. Every foreign corporation, other than a moneyed corporation, subject to the provisions of this subchapter, except a corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this subchapter may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon the secretary of state. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed, the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him or her to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon the secretary of state to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as provided in this section. Service of process upon any such corporation or upon any corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this subchapter, may be made by either: (a) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (b) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer

performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

§ 11-610 Limitations of time. The provisions of the civil practice law and rules relative to the limitation of time enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this subchapter, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations provided for in this section shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

## SUBCHAPTER 3
## FINANCIAL CORPORATION TAX
### PART 1
### TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

§ 11-611 Definitions. When used in this part:

1. The term "financial corporation" means every corporation doing a banking business as defined in this section, other than a national banking association, a trust company all of the capital stock of which is owned by not less than twenty savings banks organized under a law of this state, or a corporation taxable under subchapter two of this chapter, and shall include the mortgage facilities corporation created by chapter five hundred sixty-four of the laws of nineteen hundred fifty-six and any corporation eighty percent or more of whose voting stock is beneficially owned by a corporation or corporations subject to article three or article three-a of the banking law or a national banking association or associations, provided the corporation whose voting stock is so owned is principally engaged in business which might be lawfully conducted by a corporation subject to article three of the banking law or a national banking association.

2. The word "paid", for the purpose of the deductions and credits under this part, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed, under this part. The term "received," for the purpose of the computation of net income under this part means "received or accrued" and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this part.

3. The word "dividend" means any distribution made by a corporation to its shareholders or members, out of its earnings or profits, whether in cash, or in property other than stock of the corporation.

4. The words "doing a banking business" means doing such business as a corporation may be created to do under articles three, five, five-a, and six of the banking law, or doing any business which a corporation is authorized by such articles to do.

5. The words "foreign banker doing a banking business" in the city, include every foreign corporation doing a banking business in the city, except a national banking association.

6. The words "savings and loan association" mean every corporation doing such business as a corporation may be created to do under article ten of the banking law, including every federal savings and loan association organized under authority of the United States.

§ 11-612 Tax based on net income; imposition; minimum tax; new incorporations; dissolution; consolidations; mergers, etc.

1. For the privilege of doing business in the city:

(a) Every bank and savings and loan association organized under the authority of this state;

(b) Every trust company incorporated, organized or formed under, by or pursuant to a law of the state, other than a trust company all of the stock of which is owned by not less than twenty savings banks organized under a law of the state, and every domestic corporation authorized to do a trust company's business solely or in connection with any other business, under a general or special law of the state;

(c) Every other domestic financial corporation;

(d) Every incorporated foreign banker doing a banking business and every other foreign financial corporation; and

(e) Every federal savings and loan association located within the city, shall annually pay a tax at the rate of four and one-half per centum except that for the years nineteen hundred seventy-one and those following, the rate shall be five and sixty-three one hundredths per centum, to be computed as provided in this part, upon the basis of its net income for each calendar year, beginning with the calendar year nineteen hundred sixty-six, next preceding the date when such tax becomes due, if the taxpayer is required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section 11-636 of this subchapter, upon the basis of its net income for the calendar year with respect to which such declaration is required to be filed.

2. Every such corporation for the privilege of doing business in the city and every federal savings and loan association located in the city shall be subject to a minimum tax of not less than ten dollars and not less than one mill except that for the years nineteen hundred seventy-one and those following such minimum tax shall be not less than twelve and one-half dollars and not less than one and one-quarter mills upon each dollar of such a part of its issued capital stock on the last day of the calendar year preceding that in which such tax becomes due, at its face value, as the gross income of such corporation derived from business carried on within the city during such calendar year, bears to its gross income derived from all business, both within and without the city, during said year, but if such a corporation has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance; except that a savings bank and savings and loan association shall be subject to a minimum tax of not less than an amount

equal to two per centum of the amount of interest or dividends credited by it to depositors or shareholders during the calendar year preceding that in which such tax becomes due except that for the years nineteen hundred seventy-one and those following such minimum tax shall be not less than twelve and one-half dollars and not less than an amount equal to two and one-half per centum of the amount of interest or dividends credited by it to depositors or shareholders during the calendar year preceding that in which such tax becomes due, provided that, in determining such amount each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of two per centum per annum whichever is less and except also that in the case of a trust company or savings bank incorporated in the calendar year preceding that in which its first return under this part shall be due and after the thirtieth day of June in such year, the minimum tax, computed as in this subdivision provided, shall be reduced one-twelfth for each month, or major portion thereof, subsequent to said thirtieth day of June during which such trust company or savings bank did not exercise the privilege of doing business in the city.

3. For the privilege of doing business in the city, every such domestic corporation, except trust companies and savings banks, shall be subject to a tax for the calendar year in which its organization certificate is filed, and, for the privilege of doing business in the city, every such foreign corporation shall be subject to a tax for the calendar year in which it first does business in the city, and, every federal savings and loan association located within the city shall be subject to a tax for the calendar year in which it first becomes located within the city, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such calendar year, and the issued capital stock shall be taken as of the last day of such calendar year; provided, however, that the tax so computed shall be reduced one-twelfth for each month, or major portion thereof, in such calendar year, during which such corporation was not doing business in the city, or, if a federal savings and loan association, was not located in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars.

4. For the privilege of doing business in the city, every such trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall be subject to a tax for such period, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for such period; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the last day of such period; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or major portion thereof, in such period, during which such trust company or savings bank was not doing business in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars.

5. For the privilege of doing business in the city, every such corporation, except trust companies and savings banks, which shall be

dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with another corporation taxable under this part and, every such foreign corporation which shall cease to do business in the city during the same period, and every federal savings and loan association which ceases to be located in the city during the same period, and shall not become merged or consolidated with another corporation taxable under this part, shall pay a tax for the period from the thirty-first day of December up to the time of dissolution, ceasing to do business in the city, or ceasing to be located in the city, as the case may be, equal to that which would have been payable had it not been dissolved, ceased to do business in the city, or ceased to be located in the city, except that such tax shall be reduced one-third and an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was not doing business in the city, or was not located in the city, and in no event shall the tax be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax be less than twelve and one-half dollars. If such dissolution or cessation occurs between the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by section 11-633 of this subchapter, it may file a claim for refund as provided in section 11-678 of this chapter, showing any reduction in tax to which it may be entitled as provided in the preceding sentence; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the commissioner of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than the amount theretofore paid, the excess shall be refunded by the commissioner of finance as provided in subdivision one of section 11-677 of this chapter.

6. Every such trust company and savings bank, which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under this part, shall, if dissolution takes place between the thirtieth day of June and the succeeding first day of January, be subject to a tax, for that part of such period in which it had been doing business, computed in the same manner and at the same rate as the minimum tax under subdivision two of this section, except that the income forming the basis for proration shall be the income for the calendar year in which such dissolution occurs; and the issued capital stock, or interest credited to depositors of a savings bank, shall be taken as of the date of dissolution; provided, however, that the tax so computed shall be reduced one-half and an additional one-twelfth for each month, or major portion thereof, between the date of dissolution and the succeeding first day of January. If dissolution occurs between the thirty-first day of December and the succeeding sixteenth day of March, such trust company and savings bank shall be subject to the same tax that would have been due from it on or before the fifteenth day of March had it not been dissolved, except that such tax shall be reduced one-twelfth for each month, or major portion thereof, from the date of dissolution to the succeeding first day of July, and shall be for the period beginning on the preceding first day of July and ending on the date of dissolution. In no event shall the tax under this subdivision be less than ten dollars except that for the year nineteen hundred seventy-one and those following, in no event shall the tax under this subdivision be less than twelve and one-half dollars.

7. In the case of a consolidation or merger of taxpayers, or in case a national bank taxable under part two of this subchapter shall be consolidated or merged with a taxpayer under this part, or in case of a series of such transactions, there shall be added to the net income of the taxpayer resulting from such consolidations or mergers the net income of the taxpayers which are consolidated or merged for the period for which the taxpayer resulting from such consolidation or merger is required to render any return under this part, and if such resulting taxpayer is a savings bank or savings and loan association, there shall be added to the interest or dividends credited by it to depositors or shareholders the amount of interest or dividends credited to depositors or shareholders during such period by the taxpayers which are consolidated or merged, except that net income, interest or dividends shall not be included if they have already been used as the basis for a tax under this part, and the tax payable on filing such return shall be based upon the entire net income reported therein or upon the entire amount of interest or dividends so reported, as the case may be. The acquisition by a taxpayer, directly or indirectly, of the assets or franchises of another taxpayer or national bank shall be deemed a merger for the purposes of this section.

8. The tax imposed by this part shall be for the calendar year next preceding the year in which it becomes due; except that with respect to corporations subject to a tax imposed under subdivision three, four, five or six of this section, the tax shall be for the period therein specified, and except that with respect to corporations required to file a declaration of estimated tax and to make payments on account of such estimated tax as provided by section 11-636 of this subchapter, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made.

9. In the event that it shall be finally determined by a court of competent jurisdiction that the taxes imposed on national banking associations by part two of this subchapter are unconstitutional or invalid for the reason that they are not in conformity with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this part, every corporation that otherwise would have been subject to tax under this part shall be subject to the tax imposed under subchapter two as of July thirteenth, nineteen hundred sixty-six, and all of the provisions of subchapter two, unless clearly inappropriate, shall be applicable except subdivision four of section 11-603 of this chapter; and, in such event, any payments made, reports or returns filed or any act of the commissioner of finance or of a taxpayer purportedly under this subchapter shall be treated as though made, filed or done pursuant to subchapter two.

10. Cross reference. For years for which tax is imposed, see section 11-613 of this part.

§ 11-613 Years for which imposed. 1. The tax imposed by section 11-612 of this part is imposed for each calendar year included within the period beginning January first, nineteen hundred sixty-six and ending December thirty-first, nineteen hundred seventy-two.

2. Cross reference. For tax imposed for years or periods subsequent to nineteen hundred seventy-two, see part four of this subchapter.

§ 11-614 Ascertainment of gain or loss. 1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other dispo-

sition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section 11-617 of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include:

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property, which exceeds:

(b) The amount of gain that would be included in determining net income pursuant to subdivision one of this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under subdivision nine of section 11-621 of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

§ 11-615 Exchange of property. Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 11-614 of this part, shall be recognized, except as provided in this section:

1. No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation;

2. No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization are, in pursuance of the plan or reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to such reorganization;

3. No gain or loss shall be recognized if a taxpayer, a party to a reorganization, exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to such reorganization; and

4. No gain or loss shall be recognized if property is transferred to a corporation by a taxpayer solely in exchange for stock or securities in such corporation, and immediately after the exchange such taxpayer is in control of the corporation; but in the case of an exchange by a taxpayer and one or more other corporations or persons this subdivision shall apply only if the amount of the stock and securities received by each is substantially in proportion to its interest in the property prior to the exchange.

5. If property, as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condem-

nation, or the threat of imminence thereof, is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the commissioner of finance, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

6. If there is distributed, in pursuance of a plan of reorganization, to a taxpayer shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such taxpayer shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

7. If an exchange would be within the provisions of subdivision one, two, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

8. If an exchange would be within the provisions of subdivision three of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then:

(a) If the taxpayer receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the taxpayer shall be recognized from the exchange, but

(b) If the taxpayer receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the taxpayer shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

9. If an exchange would be within the provisions of subdivision one, two, three, or four of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

10. As used in this section:

(a) The term "reorganization" means (i) a merger or consolidation, including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation, or (ii) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (iii) a recapitalization, or (iv) a mere change in identity, form or place of organization, however effected;

(b) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation; and

(c) The term "control" means the ownership of at least eighty per centum of the voting stock and at least eighty per centum of the total number of shares of all other classes of stock of the corporation.

11. No gain or loss shall be recognized upon the receipt by a taxpayer of property distributed in complete liquidation of a corporation. For the purposes of this subdivision a distribution shall be considered to be in complete liquidation only if:

(a) the taxpayer receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock, in such corporation, possessing at least eighty per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least eighty per centum of the total number of shares of all other classes of stock, except non-voting stock which is limited and preferred as to dividends, and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and either:

(b) the distribution is by such corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the base year; in such case the adoption by the shareholders of the resolution under which is authorized the distribution of all the assets of the corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified on such resolution; or

(c) such distribution is one of a series of distributions by such corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under paragraph (a) of this subdivision until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the year, the commissioner of finance may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as the commissioner may deem necessary to insure, if the transfer of the property is not completed within such three year period, or if the taxpayer does not continue qualified under paragraph (a) of this subdivision until the completion of such transfer, the assessment and collection of all taxes then imposed under this part for such year or subsequent years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this

paragraph a transfer of property of such corporation to the taxpayer shall not be considered as not constituting a distribution, or one of a series of distributions, in complete cancellation or redemption of all the stock of such corporation, merely because the carrying out of the plan involves: (1) the transfer under the plan to the taxpayer by such corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in subdivision three of this section, and (2) the complete cancellation or redemption under the plan, as a result of exchanges described in subdivision two of this section, of the shares not owned by the taxpayers.

§ 11-616 Exchange of property when no gain or loss is realized. When property is exchanged for other property and no gain or loss is realized under the provisions of the preceding section, the property received shall be treated as taking the place of the property exchanged therefor. Where no gain or loss is realized under the provisions of subdivision eleven of section 11-615 of this part, the basis of the property received shall be the same as it would be in the hands of the transferor determined in accordance with the provisions of section 11-614 of this part.

§ 11-617 Inventory. Whenever in the opinion of the commissioner of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the commissioner of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business most clearly reflecting the income.

§ 11-618 Net income defined. The term "net income" means the gross income of a taxpayer less the deductions allowed by this part.

§ 11-619 Computation of net income. The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the commissioner of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

§ 11-620 Gross income defined. 1. The term "gross income" includes gains, profits and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of a taxpayer is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the commissioner of finance.

3. "Gross income" of a savings bank shall include the amount received by it in any taxable year as a distribution in liquidation of the mutual savings bank fund.

§ 11-621 Deductions. In computing net income there shall be allowed as deductions:

1. All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity.

2. All interest paid or accrued during the year on indebtedness.

3. Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government.

4. Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the commissioner of finance be accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed.

5. Debts ascertained to be worthless and charged off within the year; or in the discretion of the commissioner of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the commissioner of finance may allow such debt to be charged off in part.

6. A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due pursuant to the former article nine-b of the tax law. With respect to property such as described in subdivision twelve of this section, this deduction may be computed and allowed as provided therein.

7. If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the commissioner of finance.

8. In the case of any taxpayer who establishes or maintains a pension trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction, in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subdivision one of this section, a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but

only if such amount (a) has not theretofore been allowable as a deduction, and (b) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made or, under regulations of the commissioner of finance, covers not more than one-tenth of the total pension liability with respect to services rendered prior to such taxable year; provided that said deduction shall be allowable only with respect to a taxable year, whether the year of the transfer or payment or a subsequent year, of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities, is exempt from federal income tax.

9. The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as hereinafter provided. In computing such deduction: (a) the amount of the bond premium shall be determined with reference to the amount of the basis, for determining loss on sale or exchange, of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to July thirteenth, nineteen hundred sixty-six with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. Accordingly, such determination shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the commissioner of finance prescribing reasonable methods of amortizing bond premium. This subdivision shall apply only if the taxpayer shall so elect, in accordance with regulations of the commissioner of finance, and such election shall be made separately with respect to (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two of this subdivision, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless upon the application by the taxpayer, the commissioner of finance permits the taxpayer, subject to such conditions as the commissioner of finance deems necessary, to revoke such election. As used in this subdivision the term "bond" means any bond, debenture, note or certificate or other evidence of indebtedness, issued by any corporation and bearing interest, including any like obligation issued by a government or political subdivision thereof, with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

10. In the case of a savings bank and savings and loan association, amounts paid or credited to depositors or holders of accounts as interest or dividends on their deposits or withdrawable accounts, if such amounts are withdrawable on demand subject only to customary notice of intention to withdraw.

11. A savings bank and savings and loan association may deduct in any taxable year the amount of the repayment of any loan or advance from the

mutual savings bank fund in computing its net income and the amount of interest or dividends subject to the minimum tax under subdivision three of section 11-612 of this part.

12. (a) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in paragraph (b) of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(b) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five, or (iii) acquired, constructed, reconstructed or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six and October ten, nineteen hundred sixty-six shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (a) of this subdivision with respect to tangible personal property leased by it to any other person or corporation. Accordingly, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect

to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph (a) of this subdivision in proportion to the part of the year it uses such property.

(c) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to subdivision six of this section with references to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(d) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

§ 11-622 Items not deductible. In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

## PART 2
## TAX ON NATIONAL BANKING ASSOCIATIONS AND PRODUCTION CREDIT ASSOCIATIONS

§ 11-623 Imposition of tax. 1. Pursuant to the authority conferred by section fifty-two hundred nineteen of the United States revised statutes and in conformity with the provisions contained in subdivision c of clause one of such section, every national banking association organized under authority of the United States and located within the city, shall annually pay a tax, measured by its net income, to be computed, as provided in this part, at the rate of four and one-half per centum except that for the year nineteen hundred seventy-one and those following the rate shall be five and sixty-three one hundredths per centum, upon the basis of its net income for the calendar year next preceding the date when such tax becomes due. Such tax shall be for the calendar year next preceding the year in which it becomes due; except that with respect to national banking associations required to file a declaration of estimated tax and to make payments on account of such estimated tax in accordance with the provisions of section 11-636 of this subchapter, all payments of tax within a calendar year, whether computed on the basis of net income for the current calendar year or on the basis of net income for the preceding calendar year, shall be for the calendar year in which the payments are required to be made. If, however, such a national banking association shall be dissolved between the thirty-first day of December and the succeeding second day of September, and shall not become merged or consolidated with a corporation taxable under part one of this subchapter, it shall pay a tax for the period from the thirty-first day of December up to the time of dissolution equal to that

which would have been payable had it not been dissolved, except that such tax shall be reduced by one-third and an additional one-twelfth for each month, or major portion thereof, prior to such succeeding second day of September, during which such corporation was so dissolved. If such dissolution occurs between the fifteenth day of March and the second day of September, and if such corporation shall have filed its return on or before the fifteenth day of March as required by sections 11-630 and 11-633 of this subchapter, it may file a claim for refund as provided in section 11-678 of this chapter, showing any reduction in tax to which it may be entitled as provided by this section; and if it shall be made to appear that the amount of tax due is less than the amount as computed on the basis of the original return, the commissioner of finance shall adjust the computation of tax accordingly. If the amount of tax as so adjusted shall be less than the amount theretofore paid, the excess shall be refunded by the commissioner of finance as provided in subdivision one of section 11-677 of this chapter.

2. In the event that the taxes imposed by this part shall be finally determined to be unconstitutional or invalid for the reason that they do not conform with the provisions of section fifty-two hundred nineteen of the United States revised statutes, then, in lieu of the taxes imposed by the provisions of this part, every national banking association and every production credit association that otherwise would have been subject to tax under this part shall be subject to the tax imposed under subchapter two as of July thirteenth, nineteen hundred sixty-six, and all of the provisions of subchapter two, unless clearly inappropriate, shall be applicable except subdivision four of section 11-603 of this chapter; and, in such event, any payments made, reports or returns filed or any act of the commissioner of finance or of a taxpayer purportedly under this subchapter shall be treated as though made, filed or done pursuant to subchapter two.

3. Cross reference. For years for which tax is imposed, see section 11-624 of this part.

§ 11-624 Years for which imposed. 1. The tax imposed by section 11-623 of this part is imposed for each calendar year included within the period beginning January first, nineteen hundred sixty-six and ending December thirty-first, nineteen hundred seventy-two.

2. Cross reference. For tax imposed for years or periods subsequent to nineteen hundred seventy-two, see part four of this subchapter.

§ 11-625 Ascertainment of gain or loss; exchange of property. 1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be the cost thereof, or the inventoried value if the inventory is made in accordance with section 11-626 of this part.

2. Notwithstanding subdivision one of this section, with respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six, except stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business and accounts or notes receivable acquired in the ordinary course of trade or business from the sale of such stock in trade or property, or for services rendered, net income shall not include:

(a) That portion of the gain included in determining net income pursuant to subdivision one of this section with respect to each such property which exceeds:

(b) The amount of gain, if any, that would be included in determining net income pursuant to subdivision one of this section with respect to each such property if the basis of such property on the date of sale or other disposition were equal to its fair market value on January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to each such property in computing net income for periods on or after January first, nineteen hundred sixty-six; provided that the total adjustment to net income provided by this subdivision shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property, as determined pursuant to subdivision one of this section.

3. Upon the sale or exchange of property the amount of the gain or loss shall be determined in the manner prescribed by section 11-615 of this subchapter and the basis of such property shall be determined in the manner prescribed by section 11-616 of this subchapter.

4. In the case of any bond, with respect to which a deduction for amortizable bond premium is allowable under paragraph (i) of subdivision one of section 11-629 of this part, the basis for determining gain or loss shall be reduced by the total amount of such deductions so allowable.

§ 11-626 Inventory. Whenever in the opinion of the commissioner of finance the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventory shall be taken by such taxpayer upon such basis as the commissioner of finance may prescribe, conforming as nearly as may be to the best accounting practice in the banking business and most clearly reflecting the income.

§ 11-627 Net income defined; computation. The term "net income" means the gross income of a taxpayer less the deductions allowed by this part. The net income shall be computed in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the commissioner of finance does clearly reflect the income. In determining net income, war losses, taxation of property recovered, and basis of property shall be treated in substantially the same manner as such losses, recoveries and basis are treated under the applicable provisions of section thirteen hundred thirty-one of the internal revenue code.

§ 11-628 Gross income defined. 1. The term "gross income" includes gains, profit and income derived from the business, of whatever kind and in whatever form paid, including gains, profits or income from dealings in property, whether real or personal, or gains, profits, or income received as compensation for services, as interest, rents, commissions, brokerage or other fees, or otherwise in carrying on such business, including all dividends received on stocks and all interest received from federal, state, municipal or other bonds.

2. If the gross income of such an association is derived from business carried on both within and without the city, "gross income" means that proportion thereof which is derived from business carried on within the city, to be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations prescribed by the commissioner of finance.

§ 11-629 Deductions. 1. In computing net income there shall be allowed as deductions:

(a) All the ordinary and necessary expenses paid or incurred during the year in carrying on business, including a reasonable allowance for

salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession for business purposes of property to which the taxpayer has not taken or is not taking title or in which such taxpayer has no equity;

(b) All interest paid or accrued during the year on indebtedness;

(c) Taxes, other than taxes on income or profits paid or accrued within the year, imposed, first, by the authority of the United States, or of any of its possessions, or, second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivisions of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or, third, by the authority of any foreign government;

(d) Losses sustained during the year and not compensated for by insurance or otherwise, if incurred in business; unless in order to clearly reflect the income the losses should in the opinion of the commissioner of finance be accounted for as of a different period. No deduction shall be allowed for any loss claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of such sale or other disposition the taxpayer has acquired substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition, unless such claim is made with respect to a transaction made in the ordinary course of business. If such acquisition is to the extent of part only of substantially identical property, only a proportionate part of the loss shall be disallowed;

(e) Debts ascertained to be worthless and charged off within the year; or in the discretion of the commissioner of finance a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the commissioner of finance may allow such debt to be charged off in part;

(f) A reasonable allowance for the exhaustion, wear and tear of property used in business, including a reasonable allowance for obsolescence. In the case of any such property acquired before January first, nineteen hundred sixty-six, the amount of such deduction shall be equal to the deduction properly taken for such property in reporting the tax due. With respect to property such as described in paragraph (j) of this subdivision, this deduction may be computed and allowed as provided therein;

(g) If the gross income be derived from business carried on within and without the city, the deductions allowed by this section shall be allocated and determined on the basis of separate accounting for each office or branch or, at the election of the taxpayer, under rules and regulations to be prescribed by the commissioner of finance;

(h) In the case of any taxpayer, who establishes or maintains a pension trust to provide for the payment of reasonable pensions to its employees, there shall be allowed as a deduction, in addition to the contributions to such trust during the taxable years, to cover the pension liability accruing during the year, allowed as a deduction under paragraph (a) of this subdivision, a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount: (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer of payment is made; provided that said deduction shall be allowable only

with respect to a taxable year, whether the year of the transfer or payment or a subsequent year, of the taxpayer ending within or with a taxable year of the trust with respect to which the trust, by reason of its purposes or activities is exempt from federal income tax;

(i) The amount of the amortizable bond premium on a bond for the year shall be allowed as a deduction as provided in this paragraph. In computing such deduction, (a) the amount of the bond premium shall be determined with reference to the amount of the basis, for determining loss on sale or exchange, of such bond, and with reference to the amount payable on maturity or on earlier call date, with adjustments proper to reflect unamortized bond premium with respect to the bond, for the period prior to July thirteenth, nineteen hundred sixty-six with respect to the taxpayer with respect to such bond, and (b) the amortizable bond premium of the year shall be the amount of the bond premium attributable to such year. Such determinations shall be made in accordance with the method of amortizing bond premium regularly employed by the holder of such bond, if such method is reasonable, and in all other cases in accordance with regulations of the commissioner of finance prescribing reasonable methods of amortizing bond premium. This paragraph shall apply only if the taxpayer shall so elect, in accordance with regulations of the commissioner of finance, and such election shall be made separately with respect to: (1) bonds, the interest of which is wholly taxable, and (2) bonds, the interest of which is wholly or partially tax exempt, for purposes of the income tax imposed by chapter one of the internal revenue code. If such election is made with respect to any bond of the taxpayer described in clauses one or two of this subparagraph, it shall also apply to all bonds in the same class held by the taxpayer at the beginning of the first year to which the election applies and to all such bonds thereafter acquired by it and shall be binding for all subsequent years with respect to all such bonds of the taxpayer, unless, upon application by the taxpayer, the commissioner of finance permits the taxpayer, subject to such conditions as the commissioner of finance deems necessary, to revoke such election. As used in this paragraph, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest, including any like obligation issued by a government or political subdivision thereof, with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; and

(j) (1) At the election of the taxpayer there shall be deducted from gross income, or if gross income is derived from business carried on within and without this city, from the portion thereof allocated within the city, depreciation with respect to any property such as described in subparagraph two of this paragraph, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or

pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d), of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five or (ii) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i) or (ii) of this subparagraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph (a) of this subdivision with respect to tangible personal property leased by it to any other person or corporation. Any such contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph (a) of this subdivision in proportion to the part of the year it uses such property.

(3) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the taxpayer's net income computed without the allowance of such deduction and without the allowance of any deduction pursuant to paragraph (f) of this subdivision with reference to the same property, the excess may be carried over to the following taxable year or years and may be deducted in computing net income for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, the gain or loss thereon shall be computed by adjusting the basis of such property to reflect the deductions so allowed, and if the taxpayer's gross income is derived from business carried on both within and without the city, shall be allocated within the city. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

2. In computing net income no deduction shall in any case be allowed in respect of:

(a) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property.

(b) Any amount expended in restoring or in making good the exhaustion thereof for which an allowance is or has been made.

§ 11-630 Administration; procedure; provisions of law applicable. For the purpose of carrying into effect the provisions of this part, and except as otherwise provided in this part, income shall be computed, gain or loss ascertained, deductions made, apportionments and allocations determined, at the same time and subject to the same limitations and conditions, in so far as practicable, as is provided by part one of this subchapter in relation to the tax imposed by such part.

§ 11-631 Tax on production credit associations. Pursuant to the authority conferred by the federal farm credit act of nineteen hundred thirty-three, every production credit association organized under the authority of the United States and located within the city after the stock held in it by the federal production credit corporation has been retired shall annually pay a tax measured by its net income, which shall be computed in the same manner as the tax imposed upon national banking associations by section 11-623 of this part and shall be subject to the provisions of sections 11-624 of this part to 11-630 of this part inclusive.

§ 11-632 Applicability of part three. 1. This part shall be applicable only to the taxes imposed by parts one and two of this subchapter.

2. Cross reference. For years for which parts one and two of this subchapter impose a tax, see sections 11-613 and 11-624 of this subchapter.

## PART 3
## ADMINISTRATION FOR PARTS 1 AND 2

§ 11-633 Taxpayer's returns. 1. Every taxpayer, on or before March fifteenth of each year, beginning with the year nineteen hundred sixty-seven and ending with the year nineteen hundred seventy-three, shall make a return subscribed by the taxpayer and affirmed by the taxpayer to be true under the penalties of perjury to the commissioner of finance, for the calendar year next preceding, as to the business or that portion of the business of such taxpayer the income from which is the basis of taxation under part one or two of this subchapter, except that every trust company and savings bank which shall become incorporated between the thirty-first day of December and the succeeding first day of July, shall make its return for such period on or before September first, and every taxpayer, other than a trust company and savings bank, which shall commence to do business in the city or become located in the city, shall make its return for the calendar year in which it commences to do business or becomes located, on or before the twentieth day of January of the year succeeding such calendar year, and except that every taxpayer, other than a trust company and savings bank, which shall be dissolved, cease to do business in the city or cease to be located in the city, between the thirty-first day of December and the succeeding sixteenth day of March and shall not become merged or consolidated with another corporation taxable under the same part, shall make its return for such period on or before the date of such dissolution, or cessation of business, and every trust company and savings bank which shall be dissolved, and shall not become merged or consolidated with another corporation taxable under the same part, shall make its return, for the period for which it is taxable under subdivision six of section 11-612 of this subchapter on or before the date of such dissolution. Such return shall be in such form and contain such information as the commissioner of

finance may require for the purpose of making any computation or otherwise performing its duty under parts one, two, and three of this subchapter. Such return shall state specifically the items of gross income derived from such business and the deductions allowed by the part for which the return is filed, the net income which is the basis of the tax, and the amount of tax due. The return shall be subscribed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to subscribe and affirm the return on behalf of the corporation. Blank forms of return shall be furnished by the commissioner of finance upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required. An automatic extension of three months for the filing of its annual return shall be allowed for any taxpayer if, within the time prescribed under this subdivision for the filing thereof, such taxpayer files with the commissioner of finance an application for extension in such form as the commissioner of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax. The commissioner of finance may grant a reasonable extension of time for filing a return, which may be in addition to any three-month automatic extension allowed, whenever in the commissioner's judgment good cause exists and shall keep a record of every such extension and the reason therefor. No such extension or extensions shall aggregate more than three months, exclusive of any automatic extension.

2. If the amount of taxable income for any year of any taxpayer as returned to the United States treasury department or the New York state tax department is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state tax commission or other competent authority; or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of such section, or if a taxpayer, pursuant to subdivision (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subdivision (c) of such section, such taxpayer shall report such change or corrected taxable income or such execution of such notice of waiver and the changes or corrections of such taxpayer's federal or New York state taxable income on which it is based, within ninety days after such execution or the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days thereafter an amended return with the commissioner of finance which shall contain such information as it shall require.

§ 11-634 Consolidated returns. Corporations which are affiliated may, if authorized, and shall, if required, by the commissioner of finance, under regulations prescribed by the commissioner of finance, make a consolidated return for the purpose of parts one, two and three of this subchapter. The commissioner of finance may, in his or her discretion, authorize bank holding companies as defined in article three-a of the banking law to make a consolidated return with affiliated corporations taxable under part one and under part two of this subchapter in which case the consolidated tax will be computed in accordance with the provisions of part one of this subchapter. In all other cases

in which a corporation taxable under part two of this subchapter makes a consolidated return with corporations taxable under part one of this subchapter, the consolidated tax will be computed in accordance with the provisions of part one of this subchapter. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

§ 11-635 Payment of tax. Each taxpayer shall, at the time of filing its return, pay to the commissioner of finance:

(a) the amount of tax payable under part one or two of this subchapter as the same shall appear from the face of the return, or

(b) if payments of estimated tax have been made pursuant to section 11-636 of this part, the balance, if any, of the tax payable under part one or two of this subchapter, as the same shall appear from the face of the return, after applying thereto any payments made pursuant to said section.

If the time for filing the return shall be extended, the taxpayer shall pay in addition interest at the rate of six per centum per annum from the time when the return was originally required to be filed to the time of payment upon the amount by which the tax, or the portion thereof payable when the return was required to be filed, exceeds the amount then paid:

(1) a payment made on or before the date of filing of an application for an automatic extension shall be deemed properly estimated if its either: (A) not less than ninety per centum of the tax as finally determined, or (B) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

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

§ 11-636 Declaration of estimated tax; payments on account of estimated tax. 1. Every taxpayer subject to the tax imposed by part one or two of this subchapter shall make a declaration of the estimated tax upon the basis of its net income for the current calendar year, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed upon it by part one or two of this subchapter upon the basis of its net income for the current calendar year, less the amount which it estimates to be the sum of any credits allowable against the tax.

3. A declaration of estimated tax shall be filed on or before June fifteenth of the calendar year upon the net income of which the tax is based, except that if the requirements of subdivision one of this section are first met:

(a) after June first and before October second of such calendar year, the declaration shall be filed on or before October fifteenth, or

(b) after October first of such calendar year, the declaration shall be filed on or before January fifteenth of the succeeding calendar year.

Notwithstanding any other provision of this subdivision, no declaration need be filed prior to September eleventh, nineteen hundred sixty-six.

4. A taxpayer may amend a declaration under regulations of the commissioner of finance.

5. If, on or before February fifteenth of the succeeding year, a taxpayer files its return for the calendar year upon the net income of which the declaration is required to be based, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the return,

(a) such return shall be considered as its declaration if no declaration was required to be filed during such calendar year, but is otherwise required to be filed on or before January fifteenth of the succeeding year pursuant to subdivision three of this section,

(b) such return shall be considered as an amendment permitted by subdivision four of this section to be filed on or before January fifteenth if the tax shown on the return is greater than the estimated tax shown on a declaration previously made.

6. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as the commissioner may require.

7. Every taxpayer subject to the tax imposed by part one or two of this subchapter shall pay with the return of tax, if any, required to be filed upon the basis of its net income for the preceding calendar year, or with an application for extension of the time for filing such return, an amount equal to twenty-five per centum of the preceding year's tax, if such preceding year's tax exceeded one thousand dollars.

8. The estimated tax with respect to which a declaration for such calendar year is required pursuant to this section shall be paid as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount if any, paid during the same calendar year pursuant to subdivision seven of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following October fifteenth, and one on the following January fifteenth.

(b) If the declaration is filed after June fifteenth, and not after October fifteenth of such calendar year, and is not required to be filed on or before June fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same calendar year pursuant to subdivision seven of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following January fifteenth.

(c) If the declaration is filed after October fifteenth of such calendar year, and is not required to be filed on or before October fifteenth of such calendar year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect of such calendar year pursuant to subdivision seven of this section, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

9. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October fifteenth of the calendar year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

10. Any amount paid pursuant to subdivision seven of this section shall be applied after payment as a first installment against the estimated tax of the taxpayer shown on the declaration next required to be filed pursuant to this section or, if no declaration of estimated tax is required to be filed by the taxpayer pursuant to this section, any such amount shall be considered a payment on account of the tax shown on the return of tax required to be filed by the taxpayer upon the basis of its net income for the calendar year during which such amount was paid.

11. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if any amount paid pursuant to subdivision seven of this section, exceeds the tax shown on the return required to be filed by the taxpayer upon the basis of its net income for the calendar year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the rate of six per centum per annum from the date of payment of the amount so paid pursuant to such subdivision to March fifteenth of the succeeding calendar year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

12. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by part one or two of this subchapter upon the basis of its net income for the preceding calendar year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of time for filing the return required to be filed for such preceding calendar year, the amount properly estimated pursuant to section 11-635 of this part as the tax imposed upon the basis of its net income for such calendar year.

13. This section shall apply to an income period of less than twelve months in accordance with regulations of the commissioner of finance.

14. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided however, that interest at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

15. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

§ 11-637 Real property taxable. Nothing in this subchapter shall be construed to exempt the real property of any taxpayer from taxation to the same extent, according to its value, as other real property is taxed.

## PART 4
## BANKING CORPORATION TAX

§ 11-638 General definitions. As used in this part:

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

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

(c) The term "international banking facility" shall mean an international banking facility located in New York state and shall have the same meaning as is set forth in the New York state banking law or regulations of the New York state banking department or as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

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

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

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

§ 11-639 Imposition of tax. (a) (1) For the privilege of doing business in the city in a corporate or organized capacity, a tax, computed under section 11-643 of this part, is hereby annually imposed on every banking corporation for each of its taxable years, or any part thereof, beginning on or after January first, nineteen hundred seventy-three and before January first, two thousand fifteen.

(2) For the privilege of doing business in the city in a corporate or organized capacity, a tax, computed under section 11-643 of this part, is hereby annually imposed on every banking corporation for each taxable year, or any part thereof, commencing on or after January first, two thousand fifteen, where such banking corporation (i) has an election in effect under subsection (a) of section thirteen hundred sixty-two of the internal revenue code of 1986, as amended, or (ii) is a qualified subchapter S subsidiary within the meaning of paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code of nineteen eighty-six, as amended.

(b) In the case of a taxpayer whose taxable year is other than a calendar year, there is hereby imposed a tax for the privilege of doing business in the city in a corporate or organized capacity for the period beginning January first, nineteen hundred seventy-three and extending through the subsequent part of its first such taxable year ending after such date. Such tax shall be computed under section 11-643 of this part on the basis of such taxpayer's entire net income, or other applicable

basis as the case may be, for such period and shall be paid with a return which shall be separately filed with the department of finance not later than the fifteenth day of the third month succeeding the close of such period. The requirements of sections 11-644 and 11-645 of this part, relating to declarations and payments of estimated tax, except subdivision (a) of section 11-645 of this part, shall not be applicable to the tax imposed by this subdivision.

(c) For taxable years beginning on or after January first, two thousand eleven, (1) a banking corporation is doing business in the city in a corporate or organized capacity if (i) it has issued credit cards to one thousand or more customers who have a mailing address within the city as of the last day of its taxable year, or (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in the city to whom the banking corporation remitted payments for credit card transactions during the taxable year, or (iii) it has receipts of one million dollars or more in the taxable year from its customers who have been issued credit cards by the banking corporation and have a mailing address within the city, or (iv) it has receipts of one million dollars or more arising from merchant customer contracts with merchants relating to locations in the city, or (v) the sum of the number of customers described in subparagraph (i) of this paragraph plus the number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more, or the amount of its receipts described in subparagraphs (iii) and (iv) of this paragraph equals one million dollars or more. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the banking corporation.

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

(d) Cross-Reference. For the taxation of corporations that are not described in paragraph two of subdivision (a) of this section, that were taxable under this subchapter for tax years beginning before January first, two thousand fifteen, see subchapter three-A of this chapter.

§ 11-640 Banking, corporation defined; exempt corporations. (a) For the purpose of this part, a banking corporation means:

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

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

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

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

(5) every federal savings and loan association which is doing a banking business;

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

(7) every other corporation or association organized under the authority of the United States which is doing a banking business;

(8) the mortgage facilities corporation created in article seven of the private housing finance law;

(9) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by a corporation or

corporations subject to article three-a of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company, but excluding a diversified savings and loan holding company, under the federal national housing act, as amended, or by a corporation or corporations described in paragraphs one through eight of this subdivision, provided the corporation whose voting stock is so owned or controlled is principally engaged in a business, regardless of where conducted, which (i) might be lawfully conducted by a corporation subject to article three of the banking law or by a national banking association or (ii) is so closely related to banking or managing or controlling banks as to be a proper incident thereto, as set forth in paragraph eight of subsection (c) or subparagraph (F) of paragraph four of subsection (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended, or (iii) holds and manages investment assets, including but not limited to bonds, notes, debentures and other obligations for the payment of money, stocks, partnership interests or other equity interests, and other investment securities, and which is not a business described in subparagraph (i) or (ii) of this paragraph.

(b) Banking business defined. The words "banking business" as used in this section mean such business as a corporation or association may be created to do under article three, three-B, five, five-A, six or ten of the banking law or any business which a corporation or association is authorized by such article to do. However, with respect to a national banking association organized under the authority of the United States, a federal savings bank, a federal savings and loan association or a production credit association, the words "banking business" as used in this section mean such business as a national banking association, federal savings bank, federal savings and loan association or production credit association, respectively, may be created to do or is authorized to do under the laws of the United States or this state. The words "banking business" as used in this section shall also mean such business as any corporation or association organized under the authority of the United States or organized under the laws of any other state or country has authority to do which is substantially similar to the business which a corporation or association may be created to do under article three, three-B, five, five-A, six or ten of the banking law or any business which a corporation or association is authorized by such article to do.

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

(d) Corporations taxable under subchapter two. Notwithstanding the provisions of this part, all corporations of classes now or heretofore taxable under subchapter two of this chapter shall continue to be taxable under subchapter two of this chapter, except: (1) corporations organized under article five-A of the banking law; (2) corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company, but excluding a diversified savings and loan holding company, under the federal national housing act, as amended, which make a combined return under the provisions of subdivision (f) of section 11-646 of this part; (3) banking corporations described in paragraph nine of subdivision (a) of this section; and (4) any captive REIT or captive RIC that is required to be included in a combined return under the provisions of

section 11-646 of this part. Provided, however, that a corporation described in paragraph three of this subdivision which was subject to the tax imposed by subchapter two of this chapter for its taxable year ending during nineteen hundred eighty-four may, on or before the due date for filing its return, determined with regard to extensions, for its taxable year ending during nineteen hundred eighty-five, make a one time election to continue to be taxable under such subchapter two. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year.

(e) Corporations taxable under article thirty-three of the tax law. Except for corporations described in subsection (l) of section fourteen hundred fifty-three of the tax law, corporations liable to tax under article thirty-three of the tax law shall not be subject to tax under this part.

(f) A banking corporation organized under the laws of a country, or any political subdivision thereof, other than the United States shall not be deemed to be doing business in the city under this subchapter if its activities in the city are limited solely to (1) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph two of subsection (b) of section eight hundred sixty-four of the internal revenue code or (2) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph two of subsection (b) of section eight hundred sixty-four of the internal revenue code or (3) any combination of activities described in paragraphs one and two of this subdivision.

(g) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand, shall continue to be taxable under subchapter two of this chapter for all taxable years beginning on or after January first, two thousand and before January first, two thousand one; provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation that was in existence before January first, two thousand and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand and before January first, two thousand one. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with such subdivision (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if

such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand and before January first, two thousand one may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand and before January first, two thousand one in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraph four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand and before January first, two thousand one, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

(4) The provisions of this subdivision shall not apply to a captive REIT or a captive RIC.

(h) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand one and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three, provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation that was in existence before January first, two thousand one and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be

considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand one and before January first, two thousand three may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand one and before January first, two thousand three in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraph four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand one and before January first, two thousand three, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

(i) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand three and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation that was in existence before January first, two thousand three and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand three and before January first, two thousand four may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand three and before January first, two thousand four in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a

financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraphs four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand three and before January first, two thousand four, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

(j) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand four and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under subchapter two for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation that was in existence before January first, two thousand

four and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this chapter for such taxable year. A corporation that was in existence before January first, two thousand four but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand four if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand four but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand four if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand four and before January first, two thousand six may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand four and before January first, two thousand six in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraph four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled,

directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this chapter. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand four and before January first, two thousand six, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

(k) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand six and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under subchapter two of this chapter for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight, provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation that was in existence before January first, two thousand six and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. Provided, however, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if

such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand six and before January first, two thousand eight may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand six and before January first, two thousand eight in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraph four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, provided that the stock ownership requirements described in subparagraph

(i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

(l) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand fourteen and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand fourteen, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen, provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand fourteen and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand fourteen, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen only if the corporation is a banking corporation as defined in subdivision (a) of this section or the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand fourteen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand fourteen if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was

in existence before January first, two thousand fourteen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand fourteen if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand fourteen and before January first, two thousand seventeen may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraph four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand seventeen, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subdivision (a) of this section and (ii) is described in subdivision (g) of section five thousand one hundred thirty-six-A of the revised statutes of the United States or section forty-six of the federal deposit insurance act. For purposes of this subchapter, the term "banking corporation" shall include a corporation electing to be taxed under this subchapter pursu-

ant to paragraph two of this subdivision for so long as such election shall be in effect.

(m) (1) Notwithstanding anything in this part to the contrary, if any of the conditions described in paragraph three of this subdivision apply to a corporation that has made either the election to be taxable under subchapter two of chapter six of this title pursuant to the Gramm-Leach-Bliley transitional provisions in this section, or the election pursuant to subdivision (d) of this section to continue to be taxable under subchapter two of chapter six of this title, hereinafter the "electing corporation", then such corporation shall be deemed to have revoked the election as of the first day of the taxable year in which such condition applied.

(2) Notwithstanding anything in this part to the contrary, if any of the conditions described in paragraph three of this subdivision apply to a corporation required to be taxable under subchapter two of chapter six of this title pursuant to the Gramm-Leach-Bliley transitional provisions in this section, hereinafter the "grandfathered corporation", such corporation, if it is otherwise described in subdivision (a) of this section, shall be taxable under this part as of the first day of the taxable year in which such condition applied.

(3) The provisions of paragraph one and paragraph two of this subdivision shall apply if any of the following conditions exist or occur with respect to the electing corporation or the grandfathered corporation in a taxable year, including any short taxable year, beginning on or after January first, two thousand nine:

(A) the corporation ceases to be a taxpayer under subchapter two of chapter six of this title;

(B) the corporation becomes subject to the fixed dollar minimum tax under clause four of subparagraph a of paragraph (E) of subdivision one of section 11-604 of this chapter;

(C) the corporation has no wages or receipts allocable to the city pursuant to subdivision three of section 11-604 of this chapter, or is otherwise inactive; provided that this subparagraph shall not apply to a corporation which is engaged in the active conduct of a trade or business, or substantially all of the assets of which are stock and securities of corporations which are directly or indirectly controlled by it and are engaged in the active conduct of a trade or business;

(D) sixty-five percent or more of the voting stock of the corporation becomes owned or controlled directly by a corporation that acquired the stock in a transaction, or series of related transactions, that qualifies as a purchase within the meaning of paragraph three of subsection (h) of section three hundred thirty-eight of the internal revenue code unless the corporation whose stock was acquired and the corporation acquiring the stock were, immediately prior to such purchase, members of the same affiliated group, as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section; or

(E) the corporation, in a transaction or series of related transactions, acquires assets, whether by contribution, purchase, or otherwise, having an average value, determined in accordance with subdivision two of section 11-604 of this chapter, or, if greater, a total tax basis, in excess of forty percent of the average value, or, if greater, the total tax basis, of all the assets of the corporation immediately prior to such acquisition and as a result of such acquisition the corporation is principally engaged in a business that is different from the business immediately prior to such acquisition, provided that such

different business is described in subparagraph (i) or (ii) of paragraph nine of subdivision (a) of this section.

(n) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand seventeen and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand seventeen, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand twenty, provided, however, this shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand seventeen and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand seventeen, shall continue to be taxable under this subchapter for all taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand twenty only if the corporation is a banking corporation as defined in subdivision (a) of this section or the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section.

For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand seventeen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand seventeen and before January first, two thousand twenty, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand seventeen if such corporation would have been subject to tax under such subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand seventeen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand seventeen and before January first, two thousand twenty, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand seventeen if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand seventeen and before January first,

two thousand twenty may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand seventeen and before January first, two thousand twenty in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in paragraphs four or five of subdivision (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended, and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen hundred eighty-six, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph shall be made by the taxpayer on or before the due date for filing its return, determined with regard to extensions of time for filing, for the applicable taxable year. The election to be taxed under subchapter two of this chapter shall be made by the taxpayer by filing the return required pursuant to subdivision one of section 11-605 of this chapter and the election to be taxed under this subchapter shall be made by the taxpayer by filing the return required pursuant to subdivision (a) of section 11-646 of this part. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand seventeen and before January first, two thousand twenty, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

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

§ 11-641 Computations of entire net income. (a) Entire net income means total net income from all sources which shall be the same as the entire taxable income, but not alternative minimum taxable income,

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

(2) which the taxpayer, in the case of a corporation which is exempt from federal income tax, other than the tax on unrelated business taxable income imposed under section five hundred eleven of the internal revenue code, but which is subject to tax under this part, would have

been required to report to the United States treasury department but for such exemption, or

(3) which, in the case of a corporation organized under the laws of a country other than the United States, is effectively connected with the conduct of a trade or business within the United States as determined under section eight hundred eighty-two of the internal revenue code, or

(4) which the taxpayer would have been required to report to the United States treasury department if the taxpayer had not elected to be taxed under subchapter s of chapter one of the internal revenue code, or

(5) which the taxpayer would have been required to report to the United States treasury department if no election had been made to treat the taxpayer as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, subject to the modifications and adjustments provided in this section.

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

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

(2) taxes on or measured by income or profits paid or accrued within the taxable year to the United States, or any of its possessions or to any foreign country, taxes on or measured by income or profits paid or accrued to the state or any subdivision thereof, including taxes imposed under article nine, nine-A, thirteen-A, twenty-four-A, twenty-four-B of the tax law, or under article thirty-two of the tax law as such article was in effect on December thirty-first, two thousand fourteen and any tax imposed under this part or subchapter two or three-A of this chapter;

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

(5) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified

mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(6) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

(7) upon the disposition of property to which paragraph seven of subdivision (e) of this section applies, the amount, if any, by which the aggregate of the amounts described in such paragraph seven attributable to such property exceeds the aggregate of the amounts described in paragraph six of this subdivision attributable to such property;

(11) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer subject to the provisions of subdivision (c) of section five hundred eighty-five of the internal revenue code, the amount allowed as a deduction pursuant to section one hundred sixty-six of such code; and

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

(13) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property defined in subdivision (p) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred-L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code.

(14) for taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the amount allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code.

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

(16) The amount of any federal deduction for taxes imposed under article twenty-three of the tax law.

(17) For taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest

deduction allowed pursuant to paragraph ten of subdivision (j) of section one hundred sixty-three of the internal revenue code.

(c)(1) Except as otherwise provided in paragraphs two and three of this subdivision, in the case of the sale or exchange of property by a taxpayer which has been subject to part one or two of this subchapter three where the property has a higher adjusted basis for city tax purposes than for federal tax purposes, there shall be allowed as a deduction from entire net income, the portion of any gain or loss on such sale which equals the difference in such basis.

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

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

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

(iii) where both the cost and the fair market price or value on January first, nineteen hundred sixty-six, are less than the value realized, the basis for computing gain shall be the cost or the fair market price or value on such date, whichever is higher;

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

(3) In case of property of a savings bank acquired prior to January first, nineteen hundred sixty-six, and disposed of thereafter, in computing entire net income the basis of such property shall be the fair market price or value on January first, nineteen hundred sixty-six.

(d) Entire net income shall not include any refund or credit of a tax for which no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter or subchapter two of this chapter, or imposed by article twenty-three of the tax law for any prior year.

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

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

(2) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this part but exempt from federal income tax,

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

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

(5) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount

which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

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

(7) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to paragraph four of subdivision (b) of this section, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty,

(8) upon the disposition of property to which paragraph seven of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in paragraph six of subdivision (b) of this section attributable to such property exceeds the aggregate of the amounts described in paragraph seven of this subdivision attributable to such property,

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

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

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

(ii) sixty percent of dividend income from subsidiary capital, and

(iii) sixty percent of the amount by which gains from subsidiary capital exceed losses from subsidiary capital, to the extent such gains and losses were taken into account in determining the entire taxable income referred to in subdivision (a) of this section,

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

(13) for the taxable years beginning before January first, two thousand ten, in the case of a taxpayer which recaptures its balance of the reserve for losses on loans for federal income tax purposes pursuant to subdivision (c) of section five hundred eight-five of the internal revenue code, any amount which is included in federal taxable income pursuant to subdivision (c) of section five hundred eighty-five of such code,

(14) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer subject to the provisions of subdivision (c) of section five hundred eighty-five of the internal revenue code, any amount which is included in federal taxable income as a result of a recovery of a loan,

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

(16) one hundred percent of dividend income from subsidiary capital received during the taxable year if that dividend income is directly attributable to a dividend from a captive REIT or captive RIC for which the captive REIT or captive RIC claimed a federal dividends paid deduction and that captive REIT or captive RIC is included in a combined report or return under subchapter two or part four of subchapter three of this chapter.

(f) Provided the taxpayer has not made an election pursuant to paragraph two of subdivision (b) of section 11-642 of this part, there shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income, the adjusted eligible net income of an international banking facility determined as follows:

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

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

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

(B) making or placing deposits with foreign persons which are banks or foreign branches of banks, including foreign subsidiaries or foreign branches of the taxpayer, or with other international banking facilities; or

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

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

(4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.

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

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

(A) The numerator shall be

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

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

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

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

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

(8) For purposes of this subdivision, the term "foreign person" means:

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

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

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

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

(E) an international banking facility.

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

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

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

(A) Such banking corporation must be (i) a banking corporation as defined in paragraph one of subdivision (a) of section 11-640 of this part created or authorized to do business under article six or ten of the banking law, (ii) a banking corporation as defined in paragraph two or seven of subdivision (a) of section 11-640 of this part which is doing a business substantially similar to the business which a corporation or association may be created to do under article six or ten of the banking law or any business which a corporation or association is authorized by such article to do, or (iii) a banking corporation as defined in paragraph four or five of subdivision (a) of section 11-640 of this part.

(B) At least sixty percent of the amount of the total assets, at the close of the taxable year, of such banking corporation must consist of (i) cash; (ii) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a state or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section one hundred three of the internal revenue code; (iii) loans secured by a deposit or share of a member; (iv) loans secured by an interest in real property which is, or from the proceeds of the loan, will become, residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis; (v) property acquired through the liquidation of defaulted loans described in clause (iv) of this subparagraph; (vi) any regular or residual interest in a REMIC, as such term is defined in section eight hundred sixty-D of the internal revenue code and any regular interest in a FASIT, as such term is defined in section eight hundred sixty-L of the internal revenue code, but only in the proportion which the assets of such REMIC or FASIT consist of property described in clauses (i) through (v) of this subparagraph, except that if ninety-five percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (v) of this subparagraph, the entire interest in the REMIC or FASIT shall qualify; (vii) any mortgage-backed

security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is, or from the proceeds of the loan, will become, the type of property described in clause (iv) of this subparagraph and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans, provided that the real property which serves as security for the loans is, or from the proceeds of the loan, will become, the type of property described in clause (iv) of this subparagraph; (viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations; (ix) loans secured by an interest in real property located within any urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of nineteen hundred forty-nine, as amended, or located within any area covered by a program eligible for assistance under section one hundred three of the Demonstration Cities and Metropolitan Development Act of nineteen hundred sixty-six, as amended, and loans made for the improvement of any such real property; (x) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities; (xi) loans made for the payment of expenses of college or university education or vocational training; (xii) property used by the taxpayer in the conduct of business which consists principally of acquiring the savings of the public and investing in loans; (xiii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in clause (iv) of this subparagraph, but excluding loans for which the taxpayer is the creditor to any banking corporation described in paragraphs one through seven of subdivision (a) of section 11-640 of this part or a real estate investment trust, as such term is defined in section eight hundred fifty-six of the internal revenue code, and excluding loans which are treated by the taxpayer as subsidiary capital for purposes of the deductions provided by paragraph eleven of subdivision (e) of this section; (xiv) small business loans or small farm loans located in low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; and (xv) community development loans or community development investments. For purposes of clause (xv) of this subparagraph, a "community development loan" is a loan that (I) has as its primary purpose community development, (II) has not been reported or collected by the taxpayer for consideration in the taxpayer's community reinvestment act evaluation pursuant to the federal community reinvestment act of nineteen hundred seventy-seven, as amended, or section twenty-eight-b of the banking law as a mortgage loan described in clause (iv) of this subparagraph or a small business loan, small farm loan, or consumer loan, (III) benefits the taxpayer's assessment area or areas for purposes of the federal community reinvestment act of nineteen hundred seventy-seven, as amended or section twenty-eight-b of the banking law or a broader statewide or regional area that includes the taxpayer's assessment area, and (IV) is identified in the taxpayer's books and records as a community development loan for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of nineteen hundred seventy-seven, as

amended or section twenty-eight-b of the banking law. For purposes of clause (xv) of this subparagraph, a "community development investment" is an investment in a security which has as its primary purpose community development and which is identified in the taxpayer's books and records as a qualified investment for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of nineteen hundred seventy-seven, as amended or section twenty-eight-b of the banking law. For purposes of this subparagraph, "community development" means (I) affordable housing, including multifamily rental housing for low-income or moderate-income individuals; (II) community services targeted to low-income or moderate-income individuals; (III) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the small business administration's development company or small business investment company programs or have gross annual revenues of one million dollars or less; (IV) activities that revitalize or stabilize low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; or (V) activities that seek to prevent defaults and/or foreclosures in loans included in items (I) and (III) of this subclause.

(C) At the election of the taxpayer, the percentage specified in subparagraph (B) of this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. For purposes of clause (iv) of subparagraph (B) of this paragraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use, determined as of the time the loan is made. Also, for purposes of clause (iv) of subparagraph (B) of this paragraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this shall not apply for any taxable year unless, within such three year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (vi) of subparagraph (B) of this paragraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in clauses (i), (ii), (iii), (iv) or (v) of subparagraph (B) of this paragraph under principles similar to the principle of such clause (vi); except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of such clause (vi).

(2) For taxable years beginning before January first, two thousand ten, a thrift institution must exclude from the computation of its entire net income any amount allowed as a deduction for federal income tax purposes pursuant to section one hundred sixty-six, five hundred eight-five or five hundred ninety-three of the internal revenue code.

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

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

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph four or five of this subdivision, whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of:

(i) the amount determined under paragraph five of this subdivision, or

(ii) the amount which, when added to the amount determined under subparagraph (A) of this paragraph, equals the amount by which twelve percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits and reserves at the beginning of such year, taking into account any portion thereof attributable to the period before the first taxable year beginning after December thirty-first, nineteen hundred fifty-one.

The taxpayer must include in its tax return for each year a computation of the amount of the addition to the bad debt reserve determined under this subdivision. The use of a particular method in the return for a taxable year is not a binding election by the taxpayer.

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

(B) The amount determined under subparagraph (A) of this paragraph shall be reduced, but not below zero, by the amount determined under subparagraph (A) of paragraph three of this subdivision.

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

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

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

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

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

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

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

(6) (A) (i) Each taxpayer described in paragraph one of this subdivision shall establish and maintain a New York reserve for losses on qualifying real property loans, a New York reserve for losses on nonqualifying loans and a supplemental reserve for losses on loans. Such reserves shall be maintained for all subsequent taxable years that this subdivision applies to the taxpayer.

(ii) For purposes of this subdivision, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans.

(iii) Except as provided in this clause, the balances of each such reserve at the beginning of the first day of the first taxable year beginning after December thirty-first, nineteen hundred ninety-five shall be the same as the balances maintained for federal income tax purposes in accordance with paragraph one of subdivision (c) of section five hundred ninety-three of the internal revenue code as in existence on December thirty-first, nineteen hundred ninety-five for the last day of the last tax year beginning before January first, nineteen hundred ninety-six. A taxpayer which maintained a New York reserve for loan losses on qualifying real property loans in the last tax year beginning before January first, nineteen hundred ninety-six shall have a continuation of such New York reserve balance in lieu of the amount determined under this clause.

(iv) Notwithstanding clause (ii) of this subparagraph, any amount allocated to the reserve for losses on qualifying real property loans pursuant to paragraph five of subdivision (c) of section five hundred ninety-three of the internal revenue code as in effect immediately prior to the enactment of the Tax Reform Act of nineteen hundred seventy six shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subparagraph (B) of paragraph three of this subdivision, and for such purpose such amount shall be treated as remaining in such reserve.

(B) Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans, except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

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

(7)(A) For purposes of this subdivision, the term "qualifying real property loan" shall mean any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan. Such term shall include any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is, or from the proceeds of the loan, will become, the type of property described in clauses (i) through (v) of subparagraph (B) of paragraph one of this subdivision. However, such term shall not include: (i) any loan evidenced by a security, as defined in subparagraph (C) of paragraph two of subdivision (g) of section one hundred sixty-five of the internal revenue code; (ii) any loan, whether or not

evidenced by a security, as defined in such subparagraph (C) of paragraph two of subdivision (g) of section one hundred sixty-five, the primary obligor of which is (I) a government or political subdivision or instrumentality thereof, (II) a banking corporation, or (III) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer or by a banking corporation or bank holding company that owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of the taxpayer; (iii) any loan, to the extent secured by a deposit in or share of the taxpayer; or (iv) any loan which, within a sixty-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes.

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

(C) For purposes of this subdivision, the term "loan" shall mean debt, as the term "debt" is used in section one hundred sixty-six of the internal revenue code.

(D) A regular or residual interest in a REMIC, as such term is defined in section eight hundred sixty-D of the internal revenue code, shall be treated as a qualifying real property loan, except that, if less than ninety-five percent of the assets of such REMIC are qualifying real property loans, determined as if the taxpayer held the assets of the REMIC, such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the provisions of this paragraph, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of this paragraph, except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of this paragraph.

(8)(A) Any distribution of property, as defined in subdivision (a) of section three hundred seventeen of the internal revenue code, by a thrift institution to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section five hundred ninety-one of such code, shall be treated as made

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

(ii) then out of the New York reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under paragraph five of this subdivision,

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

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

This subparagraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a thrift institution, except that any such distribution shall be treated as made first out of the amount referred to in clause (ii) of this subparagraph, second out of the amount referred to in clause (iii) of this subparagraph, third out of the amount referred to in clause (i) of this subparagraph and then out of such other accounts as may be proper. This subparagraph shall not apply to any transaction to which section three hundred eighty-one of such code, relating to carryovers and certain

corporate acquisitions, applies, or to any distribution to the federal savings and loan insurance corporation or the federal deposit insurance corporation in redemption of an interest in an association or institution, if such interest was originally received by the federal savings and loan insurance corporation or the federal deposit insurance corporation in exchange for financial assistance pursuant to subdivision (f) of section four hundred six of the federal national housing act or pursuant to subsection (c) of section thirteen of the federal deposit insurance act.

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

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

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

(9) A taxpayer which maintains a New York reserve for losses on qualifying real property loans and which ceases to meet the definition of a thrift institution as defined in paragraph one of this subdivision, must include in its entire net income for the last taxable year such paragraph applied the excess of its New York reserve for losses on qualifying real property loans over the greater of (A) its reserve for losses on qualifying real property loans as of the last day of the last taxable year such reserve is maintained for federal income tax purposes or (B) the balance of the New York reserve for losses on qualifying real property loans which would be allowable to the taxpayer for the last taxable year such taxpayer met such definition of a thrift institution if the taxpayer had computed its reserve balance pursuant to the method described in subparagraph (A) of paragraph one of subdivision (i) of this section.

(i) (1) For taxable years beginning before January first, two thousand ten, a taxpayer subject to the provisions of subdivision (c) of section five hundred eighty-five of the internal revenue code and not subject to subdivision (h) of this section may, in computing entire net income, deduct an amount equal to or less than the amount determined pursuant to subparagraph (A) of this paragraph or subparagraph (B) of this paragraph, whichever is greater. Provided, however, in no event shall the deduction be less than the amount determined pursuant to such subparagraph (A).

(A) The amount determined pursuant to this subparagraph shall be the amount necessary to increase the balance of its New York reserve for losses on loans, at the close of the taxable year, to the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the five preceding taxable years, or, with the approval of the commissioner of finance, a shorter period, adjusted for recoveries of bad

debts during such period, bears to (ii) the sum of the loans outstanding at the close of such six or fewer taxable years.

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

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

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

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

(2) (A) For taxable years beginning before January first, two thousand ten, each taxpayer described in paragraph one of this subdivision shall establish and maintain a New York reserve for losses on loans. Such reserve shall be maintained for all subsequent taxable years. The balance of the New York reserve for losses on loans at the beginning of the first day of the first taxable year the taxpayer becomes subject to this subdivision shall be the same as the balance at the beginning of such day of the reserve for losses on loans maintained for federal income tax purposes. The New York reserve for losses on loans shall be reduced by an amount equal to the deduction allowed, but not more than the amount allowable, for worthless debts for federal income tax purposes pursuant to section one hundred sixty-six of the internal revenue code plus the amount, if any, charged against its reserve for losses on loans pursuant to paragraph four of subdivision (c) of section five hundred eighty-five of such code.

(B) For purposes of subparagraph (A) of this paragraph, a taxpayer which had previously been subject to the provisions of subdivision (h) of this section shall establish a New York reserve for losses on loans equal to the sum of (i) the greater of (I) the balance of its federal reserve for losses on qualifying real property loans as of the first day of the first taxable year the taxpayer becomes subject to the provisions of this subdivision or (II) the greater of the amounts determined under subparagraphs (A) and (B) of paragraph nine of subdivision (h) of this section in the year such paragraph applied to the taxpayer, (ii) the greater of (I) the balance in its federal reserve for losses on nonqualifying loans as of the first day of the first taxable year the taxpayer becomes subject to this subdivision or (II) the balance in its New York reserve for losses on nonqualifying loans as of the last date the taxpayer was subject to the provisions of subdivision (h) of this section, and (iii) the balance in its supplemental reserve for losses on loans as of the last date the taxpayer was subject to the provisions of subdivision (h) of this section.

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

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

(B) any taxpayer which ceases to be subject to tax under this part, or

(C) any other unusual circumstances,

shall be determined by the commissioner of finance. Provided, however, any banking corporation which was subject to tax for federal income tax purposes but not subject to tax under this part for prior taxable years shall have as its opening New York reserve for losses on loans the amount determined by applying the provisions of subparagraph (A) of paragraph one of this subdivision to loans outstanding at the close of its last taxable year for federal income tax purposes ending prior to the first taxable year for which the taxpayer is subject to tax under this part and provided, further, that the provisions of subparagraph (B) of paragraph one of this subdivision shall not apply.

(j) (1) For any taxable year beginning in nineteen hundred seventy-three or for any period for which a tax is imposed under subdivision (b) of section 11-639 of this part, entire net income shall be computed without regard to the amount allowable as a deduction for bad debts or an addition to a reserve for bad debts in computing federal taxable income for the taxable year, but, in lieu thereof, a deduction shall be allowed to the extent and in the manner authorized by subdivision five of section 11-621 or subdivision (e) of section 11-629 of this subchapter as if such provisions were set forth in full in this part and by treating such provisions as applicable under this part.

(2) In the case of property placed in service prior to January first, nineteen hundred seventy-three, for which the taxpayer properly adopted a different method of computing depreciation under section 11-621 or section 11-629 of this subchapter than was adopted for federal income tax purposes with respect to such property, entire net income under this part shall be computed without regard to the amount allowable as a deduction for depreciation of such property in computing federal taxable income for the taxable year but, in lieu thereof, shall be computed as if such deduction were determined by the method of depreciation adopted with respect to such property under section 11-621 or 11-629 of this subchapter.

(3) In computing entire net income, the amount allowable as a deduction for charitable contributions for federal income tax purposes shall be: (a) increased for the first taxable year or period beginning in nineteen hundred seventy-three by the amount of any contributions made during such taxable year or period which were not allowable as a deduction for charitable contributions for federal income tax purposes for such taxable year or period because of an election pursuant to paragraph two of subsection (a) of section one hundred seventy of the internal revenue code and which were not deductible in computing the tax due under part one or two of this subchapter, and (b) decreased by any amount allowed as a deduction for federal income tax purposes for the taxable year under section one hundred seventy of the internal revenue code as a carryover of excess contributions which are not made in such taxable year and which were deductible in computing the tax due under part one or two of this subchapter.

(4) There shall be excluded from the computation of entire net income any amount allowed as a deduction for federal income tax purposes for the taxable year under section twelve hundred twelve of the internal revenue code as a capital loss carry forward to the taxable year, which

was deductible as a loss in computing the tax due under part one or two of this subchapter.

(5) There shall be excluded from the computation of entire net income the amount of any income or gain from the sale of real or personal property which is includible in determining federal taxable income for the taxable year pursuant to the installment method under section four hundred fifty-three of the internal revenue code, to the extent that such income or gain was includible in the computation of the tax due under part one or two of this subchapter.

(6) To the extent not otherwise provided in this part, there shall be excluded from entire net income the amount necessary to prevent the taxation under this part of any other amount of income or gain which was properly included in income or gain and was taxable under part one or two of this subchapter and there shall be disallowed as a deduction in computing entire net income any amount which was allowed as a deduction in computing the tax due under such parts.

(k) (1) At the election of the taxpayer, there shall be deducted from the portion of its entire net income allocated within the city, depreciation with respect to any property such as described in paragraph two of this subdivision, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for depreciation or amortization of the same property, and the total of all deductions allowed under parts one and two of this subchapter three and this part in any taxable year or years with respect to the depreciaton of any such property shall not exceed its cost or other basis.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this city and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-five, or (ii) acquired after December thirty-first, nineteen hundred sixty-five, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in subdivision (d) of section one hundred seventy-nine of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this city and commenced after December thirty-first, nineteen hundred sixty-five, or (iii) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subsection (h) of

section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subdivision with respect to tangible personal property leased by it to any other person or corporation, provided, that any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph one of this subdivision in proportion to the part of the year it uses such property.

(3) If the deduction allowable for any taxable year pursuant to this subdivision exceeds the portion of the taxpayer's entire net income allocated to this city for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of the taxpayer's entire net income allocated to this city for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subdivision, subdivision twelve of section 11-621 or subdivision (j) of section 11-629 of this subchapter, the gain or loss entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to paragraph one of this subdivision. Provided, however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in subdivision (d) of section one hundred seventy-nine of the internal revenue code.

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

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

(2) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, two thousand nine, or during any taxable year in which the taxpayer was not subject to the tax imposed by this subchapter;

(3) such deduction shall not exceed the deduction for the taxable year allowed under section one hundred seventy-two of the internal revenue code augmented by the excess of the amount allowed as a deduction pursuant to subdivision (h) or (i) of this section, whichever is applicable, over the amount allowed as a deduction pursuant to section one hundred sixty-six or five hundred eighty-five of the internal revenue code, for each taxable year in which the taxpayer had a net operating loss which is carried to the taxable year of the deduction under this provision, in the aggregate, except to the extent such excess was previously deducted in computing entire net income; and

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

(k-2) Notwithstanding any other provision of this section to the contrary, for taxable years beginning before January first, two thousand twenty-one, any amendment to section one hundred seventy-two of the internal revenue code made after March first, two thousand twenty shall not apply to this part.

(1) If the period covered by a return under this part is other than the period covered by the return to the United States treasury department, entire net income and alternative entire net income shall be determined by multiplying the taxable income reported to such department, as adjusted pursuant to the provisions of this part, by the number of calendar months or major parts thereof covered by the return under this part and dividing by the number of calendar months or major parts thereof covered by the return to such department. If it shall appear that such method of determining entire net income or alternative entire net income does not properly reflect the taxpayer's income during the period covered by the return under this part, the commissioner of finance shall be authorized in his or her discretion to determine such entire net income or alternative entire net income solely on the basis of the taxpayer's income during the period covered by its return under this part.

(m) The commissioner of finance, may, whenever necessary in order to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(n) Notwithstanding any other provision of this subchapter, for taxable years beginning on or after August first, two thousand two, in the case of a taxpayer that is a partner in a partnership subject to the tax imposed by chapter eleven of this title as a utility, as defined in subdivision six of section 11-1101 of such chapter, entire net income shall not include the taxpayer's distributive or pro rata share for federal income tax purposes of any item of income, gain, loss or deduction of such partnership, or any item of income, gain, loss or deduction of such partnership that the taxpayer is required to take into account separately for federal income tax purposes.

(n-1) for taxable years ending after September tenth, two thousand one, in the case of qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in subdivision (p) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section

fourteen hundred-L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of subdivision (r) of this section, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty-F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(o) for taxable years ending after September tenth, two thousand one, upon the disposition of property to which subdivision (n) of this section applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to paragraph thirteen of subdivision (b) and subdivision (n) of this section attributable to such property.

(p) for purposes of subdivisions (n) and (o) of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section one hundred sixty-eight of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

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

(B) Effective rate of tax. "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax

liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that city, the maximum statutory rate of tax imposed by said city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

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

(2) Royalty expense add backs. (A) For the purpose of computing entire net income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this subdivision shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements: (I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof; (II) the tax base for such tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdic-

tions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-643.5 of this part for the taxable year.

(iii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

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

(r) For taxable years beginning on or after January first, two thousand four, in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, a taxpayer shall be allowed with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code, the deductions allowable under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five.

(s) Upon the disposition of property to which subdivision (r) of this section applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the modification provided in such subdivision attributable to such property.

(t) Entire net income shall not include the amount of any grant received through either the COVID-19 pandemic small business recovery grant program, pursuant to section sixteen-ff of the New York state urban development corporation act, or the small business resilience grant program administered by the department of small business services, to the extent the amount of either such grant is included in federal taxable income.

§ 11-641.1 Computation of alternative entire net income. (a) Alternative entire net income means entire net income as determined pursuant to section 11-641 of this part, except that the deductions described in paragraphs eleven and twelve of subdivision (e) of section 11-641 of this part shall not be allowed.

(b) Any election made pursuant to paragraph two of subdivision (b) of section 11-642 of this part with respect to the modification provided for in subdivision (f) of section 11-641 of this part shall be deemed to have been made for purposes of computing alternative entire net income.

§ 11-642 Allocation. (a) In general. If a taxpayer's entire net income, alternative entire net income, or taxable assets are derived

from business carried on within and without the city, the taxpayer shall for purposes of computing allocation percentages compute payroll, receipts, and deposits percentages in accordance with the following rules:

(1) The taxpayer shall ascertain the percentage which eighty percent of the total wages, salaries and other personal service compensation during the taxable year of employees within the city, except wages, salaries and other personal service compensation of general executive officers, bears to the total wages, salaries and other personal service compensation during the taxable year of all the taxpayer's employees within and without the city, except wages, salaries and other personal service compensation of general executive officers.

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

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

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

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

(i) In the case of a taxpayer described in paragraph one, two, three, four, five or seven of subdivision (a) of section 11-640 of this part, a loan or financing lease attributed by such taxpayer to a branch without the city shall be presumed to be properly so attributed provided that such presumption may be rebutted if the commissioner of finance demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur at such branch. Where such presumption has been rebutted, the loan or financing lease shall be presumed to be within the city if the taxpayer had a branch within the city at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within the city. In the case of a loan or financing lease which is recorded on the books of a place without the city which is not a branch, it shall be presumed that the greater portion of income producing activity related to such loan or financing lease occurred within the city if the taxpayer had a branch within the city at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within the city.

(ii) In the case of a taxpayer described in paragraph six or nine of subdivision (a) of section 11-640 of this part, a loan or financing lease attributed by such taxpayer to a bona fide office without the city shall be presumed to be properly so attributed provided that such presumption may be rebutted if the commissioner of finance demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur without the city.

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

(D) (i) Interest, and fees and penalties in the nature of interest, from bank, credit, travel and entertainment card receivables are earned

within the city if the mailing address of the card holder in the records of the taxpayer is in the city; and

(ii) Service charges and fees from such cards are earned within the city if the card is serviced in the city; and

(iii) Receipts from merchant discounts are earned within the city if the merchant is located within the city.

(E) The portion of total net gains and other income from trading activities, including but not limited to foreign exchange, options and financial futures, and from investment activities which is attributed within the city shall be ascertained by multiplying such total net gains and other income by a fraction the numerator of which is the average value of the trading assets and investment assets attributable to the city and the denominator of which is the average value of all trading and investment assets. A trading asset or investment asset is attributable to the city if the greater portion of income producing activity related to the trading asset or investment asset occurred within the city.

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

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

(2) The Staten Island city portion shall be the product of (i) the total of such receipts from the sale of such services and (ii) a fraction. The numerator of that fraction is the sum of the monthly percentages, as defined hereinafter, determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer, but excluding any month during which the investment company had no outstanding shares. The monthly percentage for each such month is determined by dividing (i) the number of shares in the investment company which are owned on the last day of the month by shareholders that are domiciled in the city by (ii) the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3)(i) For purposes of this subparagraph, the term "domicile", in the case of an individual, shall have the meaning as in chapter seventeen of this title; an estate or trust is domiciled in the city if it is a city resident estate or trust as defined in paragraph three of subdivision (b) of section 11-1705 of this code; a business entity is domiciled in the city if the location of the actual seat of management or control is in the city. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(ii) For purposes of this subparagraph, the term "investment company" means a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, and a partnership to which subdivision (a) of section seven thousand seven hundred four of the internal revenue code applies, by virtue of paragraph three of subdivision (c) of section seven thousand seven hundred four of such code, and that meets the requirements of subdivision (b) of section

eight hundred fifty-one of such code. This shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

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

(iv) For purposes of this subparagraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to subdivision (a) of section fifteen of the federal investment company act of nineteen hundred forty, as amended.

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

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

(H) All receipts from the performance of services not described in this paragraph are earned within the city if the services are performed in the city. When a service is performed both within and without the city, the receipts shall be allocated within and without the city in accordance with rules and regulations of the commissioner of finance.

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

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

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

(5) For purposes of this section:

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

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

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

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

(b) Allocation of entire net income.

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

(1-a) Notwithstanding the provisions of paragraph one of this subdivision, each banking corporation described in paragraph nine of subdivision (a) of section 11-640 of this part subject to the tax imposed by this part that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subdivision (a) of this section, shall determine the portion of its entire net income derived from business carried on within the city by multiplying such income by an income allocation percentage obtained as follows:

(A) For taxable years beginning in two thousand nine, the income allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of forty-six percent and the percentage determined under paragraph two of subdivision (a) of this section, and

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

(B) For taxable years beginning in two thousand ten, the income allocation percentage shall be determined by adding together the following percentages:

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

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

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

(C) For taxable years beginning in two thousand eleven, the income allocation percentage shall be determined by adding together the following percentages:

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

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

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

(D) For taxable years beginning in two thousand twelve, the income allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of sixty-four percent and the percentage determined under paragraph two of subdivision (a) of this section, and

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

(E) For taxable years beginning in two thousand thirteen, the income allocation percentage shall be determined by adding together the following percentages:

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

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

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

(F) For taxable years beginning in two thousand fourteen, the income allocation percentage shall be determined by adding together the following percentages:

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

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

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

(G) For taxable years beginning in two thousand fifteen, the income allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of eighty-two percent and the percentage determined under paragraph two of subdivision (a) of this section, and

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

(H) For taxable years beginning in two thousand sixteen, the income allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of eighty-eight percent and the percentage determined under paragraph two of subdivision (a) of this section, and

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

(I) For taxable years beginning in two thousand seventeen, the income allocation percentage shall be determined by adding together the following percentages:

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

(ii) the product of ninety-four percent and the percentage determined under paragraph two of subdivision (a) of this section, and

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

(J) For taxable years beginning after two thousand seventeen, the income allocation percentage shall be the percentage determined under paragraph two of subdivision (a) of this section.

(K) The commissioner shall promulgate rules necessary to implement the provisions of this paragraph under such circumstances where any of the percentages to be determined under paragraph one, two or three of subdivision (a) of this section cannot be determined because the taxpayer has no compensation, receipts or deposits within or without the city.

(2) (A) In lieu of the modification provided for in subdivision (f) of section 11-641 of this part, relating to a modification for the adjusted eligible net income of an international banking facility, a taxpayer may, in the manner prescribed by the commissioner of finance, elect to modify on an annual basis its income allocation percentage in the manner described in clauses (i), (ii) and (iii) of this paragraph below:

(i) wages, salaries and other personal service compensation properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of wages, salaries and other personal service compensation of employees within the city,

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

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

(B) For purposes of this paragraph, the term "eligible gross income" refers to such term as set out in subdivision (f) of section 11-641 of this part except that the term "foreign person" as defined in paragraph eight of such subdivision (f) shall not include a foreign branch of the taxpayer and in no event shall transactions between the taxpayer's international banking facility and its foreign branches be considered.

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

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

(2) When an election has been made pursuant to paragraph two of subdivision (b) of this section, relating to international banking facilities, the taxpayer shall make the modifications described in such paragraph for purposes of its alternative entire net income allocation percentage.

(d) Allocation of taxable assets. If the taxpayer's taxable assets are derived from business carried on both within and without the city, the portion thereof which is derived from business carried on within the city shall be determined by multiplying its taxable assets by an asset allocation percentage determined in the same manner as the income allocation percentage under subdivision (b) of this section is determined when the election provided for in paragraph two of such subdivision has been made, except that the modifications described in clauses (i), (ii) and (iii) of subparagraph (A) of such paragraph shall not be made.

§ 11-643 Computation of tax for taxable years ending on or before December thirty-first, nineteen hundred seventy-three. For taxable years ending on or before December thirty-first, nineteen hundred seventy-three, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. Five and sixty-three one-hundredths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) of this section is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, one and one-quarter mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, as the gross income of such taxpayer derived from business carried on within the city, during such taxable year, bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) For a savings bank and savings and loan association, one and forty-three one-hundredths percent of the interest or dividends credited by it to depositors or shareholders during the taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less.

(3) Twelve and one-half dollars.

§ 11-643.1 Computation of tax for taxable years beginning on or after January first, nineteen hundred seventy-four and ending on or before December thirty-first, nineteen hundred seventy-four. For taxable years beginning on or after January first, nineteen hundred seventy-four and ending on or before December thirty-first, nineteen hundred seventy-four, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. Six and seven hundred fifty-six one-thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) of this section is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, one and one-half mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, as the gross income of such taxpayer derived from business carried on within the city, during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) For a savings bank and savings and loan association, one and seven hundred sixteen one-thousandths percent of the interest or dividends credited by it to depositors or shareholders during the taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less.

(3) Fifteen dollars.

§ 11-643.2 Computation of tax for taxable years beginning in nineteen hundred seventy-three and ending in nineteen hundred seventy-four. For each taxable year beginning in nineteen hundred seventy-three and ending in nineteen hundred seventy-four, two tentative taxes shall be computed, the first as provided in section 11-643 and the second as provided in section 11-643.1 of this part, 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-three and the number of days in nineteen hundred seventy-four, respectively, which fall within the taxable year, bears to the number of days in the entire taxable year.

§ 11-643.3 Computation of tax for taxable years beginning on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred eighty-five. For taxable years beginning on or after January first, nineteen hundred seventy-five and before January first, nineteen hundred eighty-five, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. (1) Except for a savings bank and savings and loan association, thirteen and eight hundred twenty-three one-thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(2) For a savings bank and savings and loan association, twelve and one hundred thirty-four thousandths percent of the taxpayer's entire net income, or the portion thereof allocated to this city, for the taxable year, or part thereof.

(b) Alternative minimum tax. If the tax under subdivision (a) of this section is less than any of the following amounts, the tax shall be the largest of the following amounts:

(1) Except for a savings bank and savings and loan association, two and six-tenths mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, as the gross income of such taxpayer derived from business carried on within the city during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(2) Except as otherwise provided in paragraph three of this subdivision, for a savings bank and savings and loan association, two and five hundred seventy-four one-thousandths percent of the interest or dividends credited by it to depositors or shareholders during any taxable year, provided that, in determining such amount, each interest or dividend credit to a depositor or shareholder shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less.

(3) (i) For a savings bank and savings and loan association, for any quarterly accounting period in which such savings bank or savings and loan association credits or pays dividends to its depositors or shareholders on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six, and after such credit or payment the net worth of such savings bank or savings and loan association is less than five percent of the amount due depositors, one and eight hundred twenty-four one-thousandths percent of the interest or dividends credited by it to a depositor or shareholder during such accounting period, provided that, in determining such amount, each interest or dividend credit to depositors or shareholders shall be deemed to be the interest or dividend actually credited or the interest or dividend which would have been credited if it had been computed and credited at the rate of three and one-half percent per annum, whichever is less. In determining the lesser of the amount of interest or dividends actually credited to depositors or shareholders or the amount of interest or dividends which would have been credited if such interest or dividends had been computed and credited at the rate of three and one-half percent per annum, the provisions of subparagraph (ii) of this paragraph shall not be considered.

(ii) For purposes of the computation provided for in subparagraph (i) of this paragraph, except where the tax computed under subparagraph (i) of this paragraph is computed as if the interest or dividends were computed and credited at the rate of three and one-half percent per annum, that portion of the interest or dividends credited on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six by:

(A) a savings bank to a depositor or shareholder which is attributable to an increase or a deemed increase in the gross earnings, surplus fund,

or net worth of the savings bank, which increase became available for interest or dividends upon the prior written approval of the superintendent of banks pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law; or

(B) a savings and loan association to a depositor or shareholder which is attributable to an increase or a deemed increase in gross income, undivided profits, surplus account or net worth of the savings and loan association, which increase became available for interest or dividends upon the prior written approval of the superintendent of banks pursuant to the provisions of subdivision two of section three hundred eighty-seven of the banking law; or

(C) a federal savings bank or a federal savings and loan association to a depositor or shareholder, which would have required and received prior written approval of the superintendent of banks in respect to increases in gross income, gross earnings, undivided profits, surplus funds, surplus accounts or net worth available for dividends pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law and subdivision two of section three hundred eighty-seven of the banking law, respectively, were the provisions of sections two hundred forty-four and three hundred eighty-seven of the banking law applicable to federal savings banks and federal savings and loan associations shall not be considered to have been credited to depositors or shareholders. Where the tax computed under subparagraph (i) of this paragraph is computed as if the interest or dividends were computed and credited at the rate of three and one-half percent per annum, the amount of interest or dividends which shall not be considered to have been credited to depositors or shareholders is an amount which bears the same ratio to the interest or dividends which would have been credited at the rate of three and one-half percent per annum as the amount of that portion of the interest or dividends paid or credited on or after the first day of October, nineteen hundred eighty-one but before the first day of July, nineteen hundred eighty-six, which is attributable to an increase or deemed increase in gross income, gross earnings, undivided profits, surplus funds, surplus account or net worth available for dividends pursuant to the provisions of subdivision four of section two hundred forty-four of the banking law or subdivision two of section three hundred eighty-seven of the banking law, bears to the amount of interest or dividends actually credited. For purposes of this clause, the determination of whether a federal savings bank or federal savings and loan association would have required and received prior written approval of the superintendent of banks shall be made by the superintendent of banks, upon application and upon such forms as he or she may require, by applying the provision of subdivision four of section two hundred forty-four of the banking law, as if such provisions were applicable to federal savings banks, and subdivision two of section three hundred eighty-seven of the banking law, as if such provisions were applicable to federal savings and loan associations, and the superintendent of banks may require and examine such information as he or she may deem necessary to make such determinations.

(4) (i) Except for a savings bank and savings and loan association, twenty-five dollars.

(ii) For a savings bank and savings and loan association, twenty dollars.

§ 11-643.4 Computation of tax for taxable years beginning in nineteen hundred seventy-four and ending in nineteen hundred seventy-five. For each taxable year beginning in nineteen hundred seventy-four and ending

in nineteen hundred seventy-five, two tentative taxes shall be computed, the first as provided in section 11-643.1 and the second as provided in section 11-643.3 of this part, 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-four and the number of days in nineteen hundred seventy-five, respectively, which fall within the taxable year, bears to the number of days in the entire taxable year.

§ 11-643.5 Computation of tax for taxable years beginning on or after January first, nineteen hundred eighty-five. For taxable years beginning on or after January first, nineteen hundred eighty-five, the tax imposed by section 11-639 of this part shall be the greater of the following computations:

(a) Basic tax. Nine percent of the taxpayer's entire net income, or the portion thereof allocated to the city, for the taxable year or part thereof.

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

(1) For taxable years beginning before two thousand eleven, except in the case of a corporation organized under the laws of a country other than the United States, one-tenth of a mill upon each dollar of taxable assets, or the portion thereof allocated to the city. For taxable years beginning after two thousand ten, except in the case of a taxpayer described in clause (i), (ii), or (iii) of this subparagraph, one-tenth of a mill upon each dollar of taxable assets, or the portion thereof allocated to the city.

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

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

(iii) A taxpayer, whether or not a qualified institution as defined in subparagraph (B) of paragraph five of subsection (f) of section four hundred six of the federal national housing act, as amended, or as defined in paragraph two of subsection (i) of section thirteen of the federal deposit insurance act, as amended, shall not be subject to the provisions of this paragraph for that portion of the taxable year in which it had outstanding net worth certificates issued in accordance with paragraph five of subsection (f) of section four hundred six of the federal national housing act, as amended, or issued in accordance with subsection (i) of section thirteen of the federal deposit insurance act, as amended.

(iv) For the purposes of this part: (A) the term "taxable assets" shall mean the average value of total assets reduced by any amount of money or other property received from or attributable to amounts received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended. Total assets are those assets which are properly reflected on a balance sheet the income or expenses of which are properly reflected, or would have

been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount, in the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's international banking facility for the taxable year.

(B) The term "net worth ratio" shall mean the percentage of net worth to assets on the last day of the taxable year. The term "net worth" means the sum of preferred stock, common stock, surplus, capital reserves, undivided profits, mutual capital certificates, reserve for contingencies, reserve for loan losses and reserve for security losses minus assets classified loss. The term "assets" means the sum of mortgage loans, nonmortgage loans, repossessed assets, real estate held for development or investment or resale, cash, deposits, investment securities, fixed assets and other assets, such as financial futures, goodwill and other intangible assets, minus assets classified loss. In no event shall assets be reduced by reserves for losses.

(C) The term "mortgages" shall mean loans secured by real property within or without the state, participations in and securities collateralized by pools of residential mortgages, whether or not issued or guaranteed by a United States government agency, and loans secured by stock in a cooperative housing corporation. The percentage of total assets comprised of mortgages shall be an amount equal to the ratio of the average of the four quarterly balances of such mortgages ending within the taxable year, to the average of the four quarterly balances of all assets ending within the taxable year. Such quarterly balances shall be computed in the same manner as the report of condition required for federal deposit insurance corporation or federal savings and loan insurance corporation purposes, whether or not such report is required. For taxable periods of less than one year, the taxpayer shall compute such ratio using the number of such quarterly balances ending within such taxable period.

(2) For taxable years beginning before two thousand eleven, in the case of a corporation organized under the laws of a country other than the United States, (i) two and six-tenths mills upon each dollar of such part of the taxpayer's issued capital stock on the last day of the taxable year, at its face value, but if such taxpayer has stock without par value, such stock shall be taken at its actual or market value, and not less than five dollars per share, as may be determined by the commissioner of finance, or (ii) if the taxpayer does not have issued capital stock, two and six-tenths mills upon each dollar of such part of the amount by which its average total assets exceeds its average total liabilities, as the gross income of such taxpayer derived from business carried on within the city during such taxable year bears to its gross income derived from all business, both within and without the city during said year; except that if the period covered by the return is other than twelve months, the tax shall be prorated on the basis of the number of months or major portions thereof included in the return. For purposes of this paragraph, the term "gross income" shall have the same meaning as it has in the laws of the United States relating to federal income taxes.

(3) Three percent of the taxpayer's alternative entire net income, or portion thereof allocated to the city, for the taxable year, or part thereof.

(4) One hundred twenty-five dollars.

§ 11-643.7. Relocation and employment assistance credit. (a) In addition to any other credit allowed by this part, a taxpayer that has

obtained the certifications required by chapter six-B of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this part. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code of the preceding municipality is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code of the preceding municipality. For purposes of this section, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality.

(b) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is

such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in subdivision (d) of this section, if the amount of the credit allowable under this section for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(c) The credit allowable under this section shall be deducted after the credit allowed by section 11-643.8, but prior to the deduction of any other credit allowed by this part.

(d) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code of the preceding municipality dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, the credits allowed under this section, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to subdivision (a) of this section, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this subdivision shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

§ 11-643.8 Credit relating to certain distributions from partnerships. (a) If a banking corporation is a partner in an unincorporated business taxable under chapter five of this title, and is required to include in entire net income its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such banking corporation shall be allowed a credit against the tax imposed by this part equal to the lesser of the amounts determined in paragraphs one and two of this subdivision:

(1) The amount determined in this paragraph is the product of (A) the sum of (i) the tax imposed by chapter five of this title on the unincorporated business for its taxable year ending within or with the taxable year of the banking corporation and paid by the unincorporated business and (ii) the amount of any credit or credits taken by the unincorporated business under section 11-503 of this title, except the credit allowed by subdivision (b) of such section, for its taxable year ending within or with the taxable year of the banking corporation, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (B) a fraction, the numerator of which is the net total of the banking corporation's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners of the unin-

corporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(2) The amount determined in this paragraph is the product of (A) the excess of (i) the basic tax computed pursuant to subdivision (a) of section 11-643.5 of this part, without allowance of any credits allowed by this part, over (ii) the basic tax so computed, determined as if the banking corporation had no such distributive share or guaranteed payments with respect to the unincorporated business, and (B) a fraction, the numerator of which is four and the denominator of which is nine, provided, however, that the amounts computed in clauses (i) and (ii) of this paragraph shall be computed with the following modifications:

(I) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business, the entire net income of the partner is less than zero, such entire net income shall be treated as zero; and

(II) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from any unincorporated business is less than zero, such net total shall be treated as zero.

The amount determined in this paragraph shall not be less than zero.

(b) (1) Notwithstanding anything to the contrary in subdivision (a) of this section, in the case of a banking corporation that, before the application of this section or any other credit allowed by this part, is liable for the basic tax computed under subdivision (a) of section 11-643.5 of this part, the credit or the sum of the credits that may be taken by such banking corporation for a taxable year under this section 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 part, multiplied by a fraction the numerator of which is four and the denominator of which is nine. 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 subdivision (a) of this section 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) Notwithstanding anything to the contrary in subdivision (a) of this section, in the case of a banking corporation that, before the application of this section or any other credit allowed by this part, is liable for the alternative minimum tax on alternative entire net income under paragraph three of subdivision (b) of section 11-643.5 of this part, the maximum credit that may be taken in any taxable year is the amount that will reduce the tax so computed, without allowance of any credits allowed by this part, to zero. For purposes of this paragraph each dollar of credit shall be applied so as to reduce such tax by seventy-five cents. If the amount of credit allowed under this section or the sum of such credits exceeds the amount that may be taken against such tax, 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 subdivision (a) of this section shall be taken before

taking any credit carryforward pursuant to this subdivision and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(3) No credit under this section 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 taxable assets under paragraph one of this subdivision, the tax computed on the basis of issued capital stock under paragraph two of this subdivision or the fixed-dollar minimum tax under paragraph four of subdivision (b) of section 11-643.5 of this part.

(c) For banking corporations that file a report on a combined basis pursuant to subdivision (f) of section 11-646 of this part, the credit allowed by this section 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 paragraph one of subdivision (a) of this section, the numerator of the fraction described in subparagraph (B) of such paragraph one shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all of the partners of the unincorporated business within the combined group for which such net total, as separately determined for each partner, is greater than zero, and the denominator of such fraction shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(d) The credit allowed by this section shall not be allowed to a partner in an unincorporated business with respect to any tax paid by the unincorporated business under chapter five of this title for any taxable year beginning before July first, nineteen hundred ninety-four.

(e) Notwithstanding any other provisions of this part, the credit allowable under this section shall be taken prior to the taking of any other credit allowed by this part. Notwithstanding any other provisions of this part, the application of this section shall not change the basis on which the taxpayer's tax is computed under subdivision (a) or (b) of section 11-643.5 of this part.

§ 11-644 Declarations of estimated tax. (a) Requirements of declaration. Every taxpayer subject to the tax imposed by subdivision (a) of section 11-639 of this part shall make a declaration of its estimated tax for the current taxable year, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

(b) Definition of estimated tax. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by subdivision (a) of section 11-639 of this part for the current taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax.

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

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

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

(d) Amendments of declaration. A taxpayer may amend a declaration under regulations of the commissioner of finance.

(e) Return as declaration. If, on or before February fifteenth of the succeeding year in the case of a taxpayer whose taxable year is a calendar year, a taxpayer files its return for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year for which the tax was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to paragraph two of subdivision (c) of this section, and

(2) such return shall be considered as the amendment permitted by subdivision (d) of this section to be filed on or before December fifteenth if the tax shown on the return is greater than the estimated tax shown on a declaration previously made.

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

(g) Short taxable period. If the taxable period for which a tax is imposed by subdivision (a) of section 11-639 of this part is less than twelve months, every taxpayer required to make a declaration of estimated tax for such taxable period shall make such a declaration in accordance with regulations of the commissioner of finance.

(h) Extension of time. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as the commissioner may require.

§ 11-645 Payments of estimated tax. (a) Every taxpayer subject to the tax imposed by section 11-639 of this part shall pay an amount equal to twenty-five percent of the preceding year's tax, if such preceding year's tax exceeded one thousand dollars. Such amount shall be paid with the return required to be filed for the preceding taxable year or with an application for the extension of the time for filing such return. Provided, however, that for the first taxable year or period commencing on or after January first, nineteen hundred seventy-three, the installment required by this subdivision shall be paid with the return required to be filed for the tax imposed pursuant to part one or two of this subchapter three computed on the basis of net income for the calendar year nineteen hundred seventy-two, or under the minimum tax provisions of section 11-612 of this subchapter.

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

(1) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration,

one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(2) If the declaration is filed after June fifteenth and not after September fifteenth of such taxable year, and is not required to be filed on or before June fifteenth of such year, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same taxable year pursuant to subdivision (a) of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

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

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

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

(d) Application of installments based on the preceding year's tax. Any amount paid pursuant to subdivision (a) of this section shall be applied as a first installment against the estimated tax of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section 11-644 of this part, or if no declaration of estimated tax is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax shown on the return required to be filed by the taxpayer for such taxable year.

(e) Interest on certain installments based on the preceding year's tax. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if an amount paid pursuant to subdivision (a) of this section exceeds the tax shown on the return required to be filed by the taxpayer for the taxable year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of six percent per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar.

(f) The preceding year's tax defined. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by subdivision (a) of section 11-639 of this part for the preceding taxable

year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the return required to be filed for such preceding taxable year, the amount properly estimated pursuant to paragraph one of subdivision b of section 11-647 of this part as the tax imposed upon the taxpayer for such taxable year. Provided, however, that for the first taxable year or period commencing on or after January first, nineteen hundred seventy-three, the term "preceding year's tax" as used in this section shall mean the tax imposed upon the taxpayer pursuant to part one or two of this subchapter three which was computed on the basis of net income for the calendar year nineteen hundred seventy-two, or under the minimum tax provisions of subdivision two of section 11-612 of this subchapter, or for purposes of computing the first installment of estimated tax for such first taxable year or period when an application has been filed for an extension of the time for filing the return required to be filed for the tax imposed pursuant to part one or two of this subchapter three which was computed on the basis of net income for the calendar year nineteen hundred seventy-two, or under the minimum tax provisions of section 11-612 of this subchapter, the amount of tax properly estimated for purposes of such part one or two pursuant to section 11-635 of this subchapter.

(g) Application to short taxable period. This section shall apply to a taxable period of less than twelve months in accordance with regulations of the commissioner of finance.

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

(i) Extension of time. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however that interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

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

§ 11-646 Returns. (a) Every taxpayer shall annually on or before the fifteenth day of the third month following the close of each of its taxable years transmit to the commissioner of finance a return in a form prescribed by the commissioner setting forth such information as the commissioner of finance may prescribe and every taxpayer which ceases to exercise its franchise in the city or to be subject to the tax imposed by this part shall transmit to the commissioner of finance a return on the date of such cessation or at such other time as the commissioner of finance may require covering each year or period for which no return was therefore filed.

(b) Every taxpayer shall also transmit such other returns and such facts and information as the commissioner of finance may require in the administration of this part.

(c) The commissioner of finance may grant a reasonable extension of time for filing returns whenever good cause exists. An automatic extension of six months for the filing of its annual return shall be allowed any taxpayer, if within the time prescribed by subdivision (a) of this section, such taxpayer files with the commissioner of finance an application for extension in such form as said commissioner of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

(d) Every return shall have annexed thereto a certification by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation.

(e) If the amount of taxable income, alternative minimum taxable income or other basis of tax for any year of any taxpayer, or of any shareholder of any taxpayer that has elected to be taxed under subchapter s of chapter one of the internal revenue code or of any shareholder of any taxpayer with respect to which an election has been made to be treated as a qualified subchapter s subsidiary under paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code as returned to the United States treasury department or the New York state commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state commissioner of taxation and finance or other competent authority, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer or such shareholder of a taxpayer, pursuant to subsection (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in subsection (c) of such section, such taxpayer shall report such changed or corrected taxable income, alternative minimum taxable income or other basis of tax or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income, alternative minimum taxable income or other basis of tax on which it is based, within ninety days, or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year, after such execution or the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days, or one hundred twenty days, in the case of a taxpayer making a combined return under this subchapter for such year, thereafter an amended return with the commissioner of finance which shall contain such information as the commissioner shall require.

(f) (1) For purposes of this subdivision, the term "bank holding company" means any corporation subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan

holding company, but excluding a diversified savings and loan holding company, under the federal national housing act, as amended.

(2) (i) Any banking corporation or bank holding company which is doing business in the city in a corporate or organized capacity, and

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

(B) whose voting stock is eighty percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company,

shall make a return on a combined basis under this part covering itself and such corporations described in clause (A) or (B) of this subparagraph and shall set forth such information as the commissioner of finance may require unless the taxpayer or the commissioner of finance shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation under this part. Provided, however, that no banking corporation or bank holding company not a taxpayer shall be subject to the requirements of this subparagraph unless the commissioner of finance deems that the application of such requirements is necessary in order to properly reflect the tax liability under this part, because of intercompany transactions or some agreement, understanding, arrangement or transaction of the type referred to in subdivision (g) of this section.

(ii) In the discretion of the commissioner of finance, any banking corporation or bank holding company which is doing business in the city in a corporate or organized capacity, and

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

(B) whose voting stock is sixty-five percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company, may be required or permitted to make a return on a combined basis under this part covering itself and such corporations described in clause (A) or (B) of this subparagraph and shall set forth such information as the commissioner of finance may require; provided, however, that no combined return shall be required or permitted unless the commissioner of finance deems such report necessary in order to properly reflect the tax liability under this part of any one or more of such banking corporations or bank holding companies.

(iii) In the discretion of the commissioner of finance, banking corporations or bank holding companies which are each sixty-five percent or more owned or controlled, directly or indirectly, by the same interest may be permitted or required to make a return on a combined basis under this part and shall set forth such information as the commissioner of finance may require, if at least one such banking corporation or bank holding company is doing business in the city in a corporate or organized capacity. No combined return shall be required or permitted unless the commissioner of finance deems such report necessary in order to properly reflect the tax liability under this part of any one or more of such banking corporations or bank holding companies.

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the city may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the city in a corporate or organized capacity sixty-five percent or more of whose voting stock is

owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand twenty during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand twenty, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the city and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the city in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand twenty, a banking corporation described in this clause which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during such subsequent taxable year, continues to exercise its corporate franchise or do business in the city in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand twenty, a banking corporation described in this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

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

(v)(A) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this subchapter or otherwise required to be included in a combined return under this chapter and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation

or published guidance the criteria for determining the closest controlling stockholder.

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

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

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

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

(F) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under other provisions of this subdivision, the captive REIT or captive RIC must be included in that combined return with those corporations.

(G) If the banking corporation or bank holding company that directly or indirectly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC and is the closest controlling stockholder of the captive REIT or captive RIC is a member of an affiliated group (1) that does not include any corporation that is engaged in a business that a subsidiary of a bank holding company would not be permitted to engage in, unless such business is de minimis, and (2) whose members own assets the combined average value of which does not exceed eight billion dollars, then the captive REIT or captive RIC must not be included in a combined return under this subchapter. In that instance, the captive REIT or captive RIC is subject to the provisions of subdivision seven or eight of section 11-603 of this chapter. The term "affiliated group" means "affiliated group" as defined in section

fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of such section.

(vi) For taxable years beginning on or after January first two thousand eleven, a banking corporation doing business in the city solely because it meets one or more of the tests in subparagraphs (i) through (v) of paragraph one of subdivision (c) of section 11-639 of this chapter, referred to in this subparagraph as the "credit card bank", will not be included in a combined return pursuant to subparagraph (i) of this paragraph with another banking corporation or bank holding company which is doing business in the city unless the credit card bank or the commissioner shows that the inclusion of the credit card bank in the combined return is necessary to properly reflect the tax liability of the credit card bank, the banking corporation or bank holding company under this subchapter. However, any banking corporation that meets one or more of the tests in subparagraphs (i) through (v) of paragraph one of subsection (c) of section 11-639 of this chapter and was included in a combined return for its last taxable year beginning before January first, two thousand eleven may continue to be included in a combined return for future taxable years, provided that once that banking corporation has been included in a combined return for any taxable year beginning on or after January first, two thousand eleven, it must continue to be included in a combined return until it obtains the consent of the commissioner to cease being included in a combined return because the combined return no longer properly reflects the tax liability under this subchapter of any of the corporations included in the combined return. Further, the credit card bank will be included in a combined return with (A) any banking corporation not subject to tax under this subchapter sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the credit card bank, or (B) any banking corporation or bank holding company not subject to tax under this subchapter which owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of the credit card bank, or (C) any banking corporation not subject to tax under this subchapter sixty-five percent or more of the voting stock of which is owned or controlled, directly or indirectly, by the same corporation or corporations that own or control, directly or indirectly, sixty-five percent or more of the voting stock of the credit card bank, if the corporation or corporations described in clauses (A), (B) and (C) of this subparagraph provide services for or support to the credit card bank's operations, unless the credit card bank or the commissioner shows that the inclusion of any of those corporations in the combined return fails to properly reflect the tax liability of the credit card bank. For purposes of this subparagraph, services for or support to the credit card bank's operations include such activities as billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communications services, but will not include accounting, legal or personnel services.

(3) (i) In the case of a combined return, the tax shall be measured by the combined entire net income, combined alternative entire net income or combined assets of all the corporations included in the return, including any captive REIT or captive RIC. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and

in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(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.

(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.

(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.

(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.

(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.

(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

adjust wages, salaries and other personal service compensation, receipts or deposits in computing any allocation percentage, provided only that entire net income or alternative entire net income be adjusted accordingly and that any asset directly traceable to the elimination of any receipt be eliminated from assets so as to accurately determine the tax. If however, in the determination of the commissioner of finance, such adjustments do not, or cannot effectively provide for the accurate determination of the tax, the commissioner of finance shall be authorized to require the filing of a combined report by the taxpayer and any such other corporations. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer enters into any transaction with another corporation on such terms as to create an improper loss or net income, the commissioner of finance may include in the entire net income or alternative entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

§ 11-647 Payment of tax. (a) To the extent the tax imposed for section 11-639 of this part shall not have been previously paid pursuant to section 11-645 of this part:

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

(2) such tax, or the balance thereof, imposed on any taxpayer which ceased to exercise its franchise or to be subject to the tax imposed by this part shall be payable to the commissioner of finance at the time the return is required to be filed, provided such tax of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such taxpayer, which pursuant to the provisions of this subdivision would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(b) If the taxpayer, within the time prescribed by subdivision (c) of section 11-646 of this part, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of finance on or before the date of such application is filed an amount properly estimated as provided by said subdivision the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount by which the tax, or portion thereof payable on or before the date the return was required to be filed, exceeds the amount so paid, provided that:

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

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

(c) The commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this part under such conditions as the commissioner deems just and proper.

SUBCHAPTER 3-A
CORPORATE TAX OF 2015

Section 11-651 Applicability.
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11-655 Reports.
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§ 11-651 Applicability. 1. Notwithstanding anything to the contrary in this chapter, this subchapter shall apply to corporations for tax years commencing on or after January first, two thousand fifteen, except that it shall not apply to any corporation that (a) has an election in effect under subsection (a) of section thirteen hundred sixty-two of the internal revenue code, as amended, or (b) is a qualified subchapter S subsidiary within the meaning of paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code, as amended, in any tax year commencing on or after such date. Subchapters two and three of this chapter shall not apply to corporations to which this subchapter applies for tax years commencing on or after January first, two thousand fifteen, except to the extent provided in this subchapter and to the extent that the effect of the application of subchapters two and three to tax years commencing prior to January first, two thousand fifteen carries over to tax years commencing on or after January first, two thousand fifteen.

2. Each reference in the tax law or this code to subchapters two or three of this chapter, or any of the provisions thereof, shall be deemed a reference also to this subchapter, and any of the applicable provisions thereof, where appropriate and with all necessary modifications.

§ 11-652 Definitions. 1. (a) The term "corporation" includes (1) an association within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code, including, when applicable, a limited liability company, (2) a joint-stock company or association, (3) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and (4) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;

(b) (1) Notwithstanding paragraph (a) of this subdivision, an unincorporated organization that (i) is described in subparagraph one or three of paragraph (a) of this subdivision, (ii) was subject to the provisions of chapter five of this title for its taxable year beginning in nineteen hundred ninety-five, and (iii) made a one-time election not to be treated as a corporation and, instead, to continue to be subject to the provisions of chapter five of this title for its taxable years beginning

in nineteen hundred ninety-six and thereafter, shall continue to be subject to the provisions of chapter five of this title for its taxable years beginning in nineteen hundred ninety-six.

(2) An election under this paragraph shall continue to be in effect until revoked by the unincorporated organization. An election under this paragraph shall be revoked by the filing of a return under this subchapter for the first taxable year with respect to which such revocation is to be effective. Such return shall be filed on or before the due date, determined with regard to extensions, for filing such return. In no event shall such election or revocation be for a part of a taxable year.

(c) Notwithstanding paragraph (a) of this subdivision, a corporation shall not include an entity classified as a partnership for federal income tax purposes.

2. The term "subsidiary" means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer.

2-a. The term "taxpayer" means any corporation subject to tax under this subchapter.

3. Intentionally omitted.

3-a. The term "stock" means an interest in a corporation that is treated as equity for federal income tax purposes.

4. (a) The term "investment capital" means investments in stocks that: (i) satisfy the definition of a capital asset under section one thousand two hundred twenty-one of the internal revenue code at all times the taxpayer owned such stocks during the taxable year; (ii) are held by the taxpayer for investment for more than one year; (iii) the dispositions of which are, or would be, treated by the taxpayer as generating long-term capital gains or losses under the internal revenue code; (iv) for stocks acquired on or after January first, two thousand fifteen, at any time after the close of the day in which they are acquired, have never been held for sale to customers in the regular course of business; and (v) before the close of the day on which the stock was acquired, are clearly identified in the taxpayer's records as stock held for investment in the same manner as required under paragraph one of subdivision (a) of section one thousand two hundred thirty-six of the internal revenue code for the stock of a dealer in securities to be eligible for capital gain treatment, whether or not the taxpayer is a dealer of securities subject to section one thousand two hundred thirty-six, provided, however, that for stock acquired prior to October first, two thousand fifteen that was not subject to subdivision (a) of section one thousand two hundred thirty-six of the internal revenue code, such identification in the taxpayer's records must occur before October first, two thousand fifteen. Stock in a corporation that is conducting a unitary business with the taxpayer, stock in a corporation that is included in a combined report with the taxpayer pursuant to the commonly owned group election in subdivision three of section 11-654.3 of this subchapter, and stock issued by the taxpayer shall not constitute investment capital. For purposes of this subdivision, if the taxpayer owns or controls, directly or indirectly, less than twenty percent of the voting power of the stock of a corporation, that corporation will be presumed to be conducting a business that is not unitary with the business of the taxpayer.

(b) There shall be deducted from investment capital any liabilities which are directly or indirectly attributable to investment capital. If the amount of those liabilities exceeds the amount of investment capital, the amount of investment capital shall be zero.

(c) Investment capital shall not include any such investments the income from which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section, and that investment capital shall be computed without regard to liabilities directly or indirectly attributable to such investments, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

(d) If a taxpayer acquires stock that is a capital asset under section one thousand two hundred twenty-one of the internal revenue code during the taxable year and owns that stock on the last day of the taxable year, it will be presumed, solely for the purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year. However, if the taxpayer does not in fact own that stock at the time it actually files its original report for the taxable year in which it acquired the stock, then such presumption shall not apply and the actual period of time during which the taxpayer owned the stock shall be used to determine whether the stock should be classified as investment capital after it is acquired. If the taxpayer relies on such presumption but does not own the stock for more than one year, the taxpayer must increase its total business capital in the immediately succeeding taxable year by the amount included in investment capital for that stock, net of any liabilities attributable to that stock computed as provided in paragraph (b) of this subdivision and must increase its business income in the immediately succeeding taxable year by the amount of income and net gains, but not less than zero, from that stock included in investment income, less any interest deductions directly or indirectly attributable to that stock, as provided in subdivision five of this section.

(e) When income or gain from a debt obligation or other security cannot be allocated to the city using the business allocation percentage as a result of the United States constitutional principles, the debt obligation or other security will be included in investment capital.

5. (a)(i) The term "investment income" means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less, in the discretion of the commissioner of finance, any interest deductions allowable in computing entire net income which are directly or indirectly attributable to investment capital or investment income, provided, however, that in no case shall investment income exceed entire net income.

(ii) If the amount of interest deductions subtracted under subparagraph (i) of this paragraph exceeds investment income, the excess of such amount over investment income must be added back to entire net income.

(iii) If the taxpayer's investment income determined without regard to the interest deductions subtracted under subparagraph (i) of this paragraph comprises more than eight percent of the taxpayer's entire net income, investment income determined without regard to such interest

deductions cannot exceed eight percent of the taxpayer's entire net income.

(b) In lieu of subtracting from investment income the amount of those interest deductions, the taxpayer may make a revocable election to reduce its total investment income, determined after applying the limitation in subparagraph (iii) of paragraph (a) of this subdivision, by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraphs (b) and (c) of subdivision five-a of this section. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraphs (b) and (c) of subdivision five-a of this section. A taxpayer that does not make this election because it has no investment capital will not be precluded from making those other elections.

(c) Investment income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.

5-a. (a) The term "other exempt income" means the sum of exempt CFC income and exempt unitary corporation dividends.

(b) "Exempt CFC income" means (i) except to the extent described in subparagraph (ii) of this paragraph, the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section nine hundred fifty-one of the internal revenue code, received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, and (ii) such income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of such section nine hundred fifty-one of the internal revenue code by reason of subsection (a) of section nine hundred sixty-five of the internal revenue code, as adjusted by subsection (b) of section nine hundred sixty-five of the internal revenue code, and without regard to subsection (c) of such section, received from a corporation that is not included in a combined report with the taxpayer, less, (iii) in the discretion of the commissioner of finance, any interest deductions directly or indirectly attributable to that income. In lieu of subtracting from its exempt CFC income the amount of those interest deductions, the taxpayer may make a revocable election to reduce its total exempt CFC income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision five of this section and paragraph (c) of this subdivision. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraph (b) of subdivision five of this section and paragraph (c) of this subdivision. A taxpayer which does not make this election because it has no exempt CFC income will not be precluded from making those other elections. The income described in subparagraph (ii) of this paragraph shall not constitute investment income.

(c) "Exempt unitary corporate dividends" means those dividends from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, less, in the discretion of the commissioner of finance, any interest deductions directly or indirectly attributable to such income. Other than dividend income received from corporations that are taxable under chapter eleven of this title, except for vendors of utility services that are also taxable under this subchapter, or would be taxable under chapter eleven of this title, except for vendors of utility services that are also taxable under this subchapter, if subject to tax and corporations that would have been taxable as insurance corporations under former part IV, title R, chapter forty-six of the administrative code of the city of New

York as in effect on June thirtieth, nineteen hundred seventy-four, in lieu of subtracting from this dividend income those interest deductions, the taxpayer may make a revocable election to reduce the total amount of this dividend income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision five of this section and paragraph (b) of this subdivision. If the taxpayer subsequently revokes this election, the taxpayer must revoke the elections provided for in paragraph (b) of subdivision five of this section and paragraph (b) of this subdivision. A taxpayer that does not make this election because it has not received any exempt unitary corporation dividends or is precluded from making this election for dividends received from corporations that are taxable under chapter eleven of this title, except for vendors of utility services that are also taxable under this subchapter, or would be taxable under chapter eleven of this title if subject to tax, except for vendors of utility services that are also taxable under this subchapter, shall not be precluded from making those other elections.

(d) If the taxpayer attributes interest deductions to other exempt income and the amount deducted exceeds other exempt income, the excess of the interest deductions over other exempt income must be added back to entire net income. In no case shall other exempt income exceed entire net income.

(e) Other exempt income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.

6. (a) The term "business capital" means all assets, other than investment capital and stock issued by the taxpayer, less liabilities not deducted from investment capital; provided, however, business capital shall include only those assets the income, loss or expense of which are properly reflected, or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount, in the computation of entire net income for the taxable year.

(b) Provided, further, "business capital" shall not include assets to the extent employed for the purpose of generating income which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision eight of this section and shall be computed without regard to liabilities directly or indirectly attributable to such assets, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

7. The term "business income" means entire net income minus investment income and other exempt income. In no event shall the sum of investment income and other exempt income exceed entire net income. If the taxpayer makes the election provided for in subparagraph one of paragraph (a) of subdivision five of section 11-654.2 of this subchapter, then all income from qualified financial instruments shall constitute business income.

8. The term "entire net income" means total net income from all sources, which shall be presumably the same as the entire taxable income, which, except as hereafter provided in this subdivision,

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

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

(iii) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code, is effectively connected with the conduct of a trade or business within the United States as determined under section eight hundred eighty-two of the internal revenue code.

(a) Entire net income shall not include:

(1) Intentionally omitted;

(2) Intentionally omitted;

(2-a) any amounts treated as dividends pursuant to section seventy-eight of the internal revenue code to the extent such dividends are not deducted under section two hundred fifty of such code;

(3) bona fide gifts;

(4) income and deductions with respect to amounts received from school districts and from corporations and associations, organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, for the operation of school buses;

(5) any refund or credit of a tax imposed under this chapter, or imposed by article nine, nine-A, twenty-three, or former article thirty-two of the tax law, for which tax no exclusion or deduction was allowed in determining the taxpayer's entire net income under this subchapter, subchapter two, or subchapter three of this chapter for any prior year;

(6) Intentionally omitted;

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

(8) except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such

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

(10) the amount deductible pursuant to paragraph (j) of this subdivision;

(11) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in subparagraph eleven of paragraph (b) of this subdivision attributable to such property exceeds the aggregate of the amounts described in paragraph (j) of this subdivision attributable to such property;

(12) the amount deductible pursuant to paragraph (k) of this subdivision;

(13) the amount deductible pursuant to paragraph (o) of this subdivision;

(14) the amount computed pursuant to paragraph (q), (r) or (s) of this subdivision, but only the amount determined pursuant to one of such paragraphs; and

(15) the amount computed pursuant to paragraph (t) of this subdivision.

(16) The amount of any gain added back to determine entire net income in a previous taxable year pursuant to subparagraph twenty-three of paragraph (b) of subdivision eight of this section is included in federal gross income for the taxable year.

(17) The amount of any grant received through either the COVID-19 pandemic small business recovery grant program, pursuant to section sixteen-ff of the New York state urban development corporation act, or the small business resilience grant program administered by the department of small business services, to the extent the amount of either such grant is included in federal taxable income.

(a-1) Notwithstanding any other provision of this subchapter, in the case of a taxpayer that is a partner in a partnership subject to the tax imposed by chapter eleven of this title as a utility, as defined in subdivision six of section 11-1101 of such chapter, entire net income shall not include the taxpayer's distributive or pro rata share for federal income tax purposes of any item of income, gain, loss or deduction of such partnership, or any item of income, gain, loss or deduction of such partnership that the taxpayer is required to take into account separately for federal income tax purposes.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section eight hundred sixty-four of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in the absence of such exemption provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section one hundred three of the internal revenue code;

(2) any part of any income from dividends or interest of any kind of stock, securities, or indebtedness;

(3) taxes on or measured by profits or income paid or accrued to the United States, any of its possessions, territories or commonwealths, including taxes in lieu of any of the foregoing taxes otherwise generally imposed by any possession, territory or commonwealth of the United States, or taxes paid or accrued to the state under article nine, nine-A, thirteen-A or thirty-two of the tax law as in effect on December thirty-first, two thousand fourteen;

(3-a) taxes on or measured by profits or income, or which include profits or income as a measure, paid or accrued to any other state of the United States, or any political subdivision thereof, or to the District of Columbia, including taxes expressly in lieu of any of the foregoing taxes otherwise generally imposed by any other state of the United States, or any political subdivision thereof, or the District of Columbia;

(4) taxes imposed under this chapter;

(4-a) Intentionally omitted;

(4-b) the amount allowed as an exclusion or a deduction imposed by the tax law in determining the entire taxable income for a relocation described in subdivision thirteen of section 11-654 of this subchapter which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision thirteen of section 11-654 of this subchapter;

(4-c) the amount allowed as an exclusion or a deduction imposed by the tax law for a relocation described in subdivision fourteen of section 11-654 of this subchapter in determining the entire taxable income which the taxpayer is required to report to the United States treasury department but only such portion of such exclusion or deduction which is not in excess of the amount of the credit allowed pursuant to subdivision fourteen of section 11-654 of this subchapter;

(4-d) Intentionally omitted;

(4-e) Intentionally omitted;

(5) Intentionally omitted;

(6) any amount allowed as a deduction for the taxable year under section one hundred seventy-two of the internal revenue code, including carryovers of deductions from prior taxable years;

(7) any amount by reason of the granting, issuing or assuming of a restricted stock option, as defined in the internal revenue code of nineteen hundred fifty-four, or by reason of the transfer of the share of stock upon the exercise of the option, unless such share is disposed of by the grantee of the option within two years from the date of the granting of the option or within six months after the transfer of such share to the grantee;

(8) Intentionally omitted;

(9) except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in

effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(11) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

(12) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property exceeds the aggregate of the amounts described in subparagraph eleven of this paragraph attributable to such property;

(13) Intentionally omitted;

(14) Intentionally omitted;

(15) Intentionally omitted;

(16) in the case of qualified property described in paragraph two of subsection (k) of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection (b) of section fourteen hundred-L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the amount allowable as a deduction under section one hundred sixty-seven of the internal revenue code;

(17) in the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the amount allowable as a deduction under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code;

(18) the amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code;

(19) the amount of any federal deduction for taxes imposed under article twenty-three of the tax law;

(20) the amount of any federal deduction allowed pursuant to subsection (c) of section nine hundred sixty-five of the internal revenue code;

(21) the amount of any federal deduction allowed pursuant to subparagraph (A) of paragraph one of subdivision (a) of section two hundred fifty of the internal revenue code.

(22) For taxable years beginning in two thousand nineteen and two thousand twenty, the amount of the increase in the federal interest deduction allowed pursuant to paragraph ten of subdivision (j) of section one hundred sixty-three of the internal revenue code.

(23) The amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section one thousand four hundred-Z-two of the internal revenue code.

(c) Intentionally omitted.

(c-1)(1) Notwithstanding any other provision of this subchapter, in the case of a taxpayer which is a foreign air carrier holding a foreign air carrier permit issued by the United States department of transportation pursuant to section four hundred two of the federal aviation act of nineteen hundred fifty-eight, as amended, and which is qualified under subparagraph two of this paragraph, entire net income shall not include, and shall be computed without the deduction of, amounts directly or indirectly attributable to, (i) any income derived from the international operation of aircraft as described in and subject to the provisions of section eight hundred eighty-three of the internal revenue code, (ii) income without the United States which is derived from the operation of aircraft, and (iii) income without the United States which is of a type described in subdivision (a) of section eight hundred eighty-one of the internal revenue code except that it is derived from sources without the United States. Entire net income shall include income described in clauses (i), (ii) and (iii) of this subparagraph in the case of taxpayers not described in the previous sentence;

(2) A taxpayer is qualified under this subparagraph if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered, if not in the same country as its major base of operations, are not subject to any income tax or other tax based on or measured by income or receipts imposed by such foreign country or countries or any political subdivision thereof, or if so subject to such tax, are provided an exemption from such tax equivalent to that provided for herein.

(d) The commissioner of finance may, whenever necessary in order to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity.

(f) Intentionally omitted.

(g) At the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1)(i) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization or stabilization of industrial waste, as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law, from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(ii) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source, as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law, from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) However, such deduction shall be allowed only (i) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in the city and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-six, and only for expenditures paid or incurred prior to January first, nineteen hundred seventy-two, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(ii) on condition that such facilities have been certified by the state commissioner of environmental conservation or the state commissioner's designated representative, in the same manner as provided for in section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with applicable provisions of the environmental conservation law, the state sanitary code and regulations, permits or orders issued pursuant thereto, and

(iii) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation of the same property other than the deductions allowed by this paragraph except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and

(iv) where the election provided for in paragraph (d) of subdivision three of section 11-604 of this chapter or the election provided for in subdivision (k) of section 11-641 of this chapter has not been exercised in respect to the same property.

(3)(i) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been deducted as provided herein and if within ten years from the end of the taxable year

in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(ii) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the commissioner of finance may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph (h) of subdivision three of section 11-674 of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the United States treasury for such taxable year;

(h) With respect to gain derived from the sale or other disposition of any property acquired prior to January first, nineteen hundred sixty-six; which had a federal adjusted basis on such date, or on the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, lower than its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior thereto, except property described in subsections one and four of section twelve hundred twenty-one of the internal revenue code, there shall be deducted from entire net income, the difference between (1) the amount of the taxpayer's federal taxable income, and (2) the amount of the taxpayer's federal taxable income, if smaller than the amount described in subparagraph one of this paragraph, computed as if the federal adjusted basis of each such property, on the sale or other disposition of which gain was derived, on the date of the sale or other disposition had been equal to either (i) its fair market value on January first, nineteen hundred sixty-six or the date of its sale or other disposition prior to January first, nineteen hundred sixty-six, plus or minus all adjustments to basis made with respect to such property for federal income tax purposes for periods on and after January first, nineteen hundred sixty-six or (ii) the amount realized from its sale or disposition, whichever is lower; provided, however, that the total modification provided by this paragraph shall not exceed the amount of the taxpayer's net gain from the sale or other disposition of all such property.

(i) If the period covered by a report under this subchapter is other than the period covered by the report of the United States treasury department, entire net income shall be determined by multiplying the federal taxable income, as adjusted pursuant to the provisions of this

subchapter, by the number of calendar months or major parts thereof covered by the report under this subchapter and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this subchapter, the commissioner of finance shall be authorized in his or her discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this subchapter.

(j) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) In the case of qualified property described in paragraph two of subsection (k) of section one hundred sixty-eight of the internal revenue code, other than qualified resurgence zone property described in paragraph (m) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection (b) of section fourteen hundred-L of the internal revenue code, without regard to clause (i) of subparagraph (C) of such paragraph, the depreciation deduction allowable under section one hundred sixty-seven as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one, provided, however, that for taxable years beginning on or after January first, two thousand four, in the case of a passenger motor vehicle or a sport utility vehicle subject to the provisions of paragraph (o) of this subdivision, the limitation under clause (i) of subparagraph (A) of paragraph one of subdivision (a) of section two hundred eighty-F of the internal revenue code applicable to the amount allowed as a deduction under this paragraph shall be determined as of the date such vehicle was placed in service and not as of September tenth, two thousand one.

(l) Upon the disposition of property to which paragraph (k) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph twelve of paragraph (a) and subparagraph sixteen of paragraph (b) of this subdivision attributable to such property.

(m) For purposes of this paragraph and paragraph (l) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection (k) of section one hundred sixty-eight of the internal revenue code substantially all of the use of

which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after September tenth, two thousand one. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(n) Related members expense add back. (1) For purposes of this paragraph: (i) "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(ii) "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the allocation percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that city, the maximum statutory rate of tax imposed by said city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(iii) Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the commissioner of finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(iv) A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or

transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (i) Except where a taxpayer is included in a combined report pursuant to section 11-654.3 of this subchapter with the applicable related member, for the purpose of computing entire net income or other applicable taxable basis, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(ii) Exceptions. (A) The adjustment required in this paragraph shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements: (I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(B) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-604 of this chapter for the taxable year.

(C) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(D) The adjustment required in this paragraph shall not apply if the taxpayer and the commissioner of finance agree in writing to the application or use of alternative adjustments or computations. The commissioner of finance may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she

concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(o) In the case of a taxpayer that is not an eligible farmer as defined in subsection (n) of section six hundred six of the tax law, the deductions allowable under sections one hundred seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the internal revenue code with respect to a sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code, determined as if such sport utility vehicle were a passenger automobile as defined in such paragraph five. For purposes of subparagraph sixteen of paragraph (b) and paragraph (k) of this subdivision, the terms qualified resurgence zone property and qualified New York Liberty Zone property described in paragraph two of subsection b of section fourteen hundred-L of the internal revenue code shall not include any sport utility vehicle that is not a passenger automobile as defined in paragraph five of subsection (d) of section two hundred eighty-F of the internal revenue code.

(p) Upon the disposition of property to which paragraph (o) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph thirteen of paragraph (a) and subparagraph seventeen of paragraph (b) of this subdivision attributable to such property.

(q) Subtraction modification for community banks and small thrifts. (1) A taxpayer that is a qualified community bank as defined in subparagraph two of this paragraph or a small thrift institution as defined in subparagraph two-a of this paragraph shall be allowed a deduction in computing entire net income equal to the amount computed under subparagraph three of this paragraph.

(2) To be a qualified community bank, a taxpayer must satisfy the following conditions:

(i) It is a bank or trust company organized under or subject to the provisions of article three of the banking law or a comparable provision of the laws of another state, or a national banking association.

(ii) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section 11-654.3 of this subchapter, must not exceed eight billion dollars.

(2-a) To be a small thrift institution, a taxpayer must satisfy the following conditions:

(i) It is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(ii) The average value during the taxable year of the assets of the taxpayer, or, if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section 11-654.3 of this subchapter, must not exceed eight billion dollars.

(3)(i) The subtraction modification shall be computed as follows:

(A) Multiply the taxpayer's net interest income from loans during the taxable year by a fraction, the numerator of which is the gross interest income during the taxable year from qualifying loans and the denominator of which is the gross interest income during the taxable year from all loans.

(B) Multiply the amount determined in subclause (A) of this clause by fifty percent. This product is the amount of the deduction allowed under this paragraph.

(ii)(A) Net interest income from loans shall mean gross interest income from loans less gross interest expense from loans. Gross interest expense from loans is determined by multiplying gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the thrift institution or community bank during the taxable year and the denominator of which is the average total assets of the thrift institution or community bank during the taxable year.

(B) Measurement of assets. For purposes of this clause: (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected, or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the taxpayer's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment, shall be valued at cost. Leased real property that is not properly reflected on the balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(iii) A qualifying loan is a loan that meets the conditions specified in subclause (A) of this clause and subclause (B) of this clause.

(A) The loan is originated by the qualified community bank or small thrift institution or purchased by the qualified community bank or small thrift institution immediately after its origination in connection with a commitment to purchase made by the bank or thrift institution prior to the loan's origination.

(B) The loan is a small business loan or a residential mortgage loan, the principal amount of which loan is five million dollars or less, and either the borrower is located in this city as determined under section 11-654.2 of this subchapter and the loan is not secured by real property, or the loan is secured by real property located in the city.

(C) A loan that meets the definition of a qualifying loan in a prior taxable year, including years prior to the effective date of this paragraph, remains a qualifying loan in taxable years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under section 11-654.3 of this subchapter.

(r) A small thrift institution or a qualified community bank, as defined in paragraph (q) of this subdivision, that maintained a captive REIT on April first, two thousand fourteen shall utilize a REIT subtraction equal to one hundred sixty percent of the dividends paid deductions allowed to that captive REIT for the taxable year for federal income tax purposes and shall not be allowed to utilize the subtraction modification for community banks and small thrifts under paragraph (q) of this subdivision or the subtraction modification for qualified residential loan portfolios under paragraph (s) of this subdivision in any tax year in which such thrift institution or community bank maintains that captive REIT.

(s) Subtraction modification for qualified residential loan portfolios. (1)(i) A taxpayer that is either a thrift institution as defined in subparagraph three of this paragraph or a qualified community bank as defined in subparagraph two of paragraph (q) of this subdivision and maintains a qualified residential loan portfolio as defined in subparagraph two of this paragraph shall be allowed as a deduction in computing entire net income the amount, if any, by which (A) thirty-two percent of its entire net income determined without regard to this paragraph exceeds (B) the amounts deducted by the taxpayer pursuant to sections one hundred sixty-six and five hundred eighty-five of the internal revenue code less any amounts included in federal taxable income as a result of a recovery of a loan.

(ii)(A) If the taxpayer is in a combined report under section 11-654.3 of this subchapter, this deduction will be computed on a combined basis. In that instance, the entire net income of the combined reporting group for purposes of this paragraph shall be multiplied by a fraction, the numerator of which is the average total assets of all the thrift institutions and qualified community banks included in the combined report and the denominator of which is the average total assets of all the corporations included in the combined report.

(B) Measurement of assets. For purposes of this paragraph: (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected, or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the combined group's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased real property that is not properly reflected on a balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Intercorporate stockholdings and bills, notes and accounts receivable, and other intercorporate indebtedness between the corporations included in the combined report shall be eliminated.

(V) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(2) Qualified residential loan portfolio. (i) A taxpayer maintains a qualified residential loan portfolio if at least sixty percent of the amount of the total assets at the close of the taxable year of the thrift institution or qualified community bank consists of the assets described in subclauses (A) through (L) of this clause, with the application of the rule in the last undesignated subclause of this clause. If the taxpayer is a member of a combined group, the determination of whether there is a qualified residential loan portfolio will be made by aggregating the assets of the thrift institutions and qualified community banks that are members of the combined group. Assets: (A) cash, which includes cash and cash equivalents including cash items in the process of collection, deposits with other financial institutions, including

corporate credit unions, balances with federal reserve banks and federal home loan banks, federal funds sold, and cash and cash equivalents on hand. Cash shall not include any balances serving as collateral for securities lending transactions; (B) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality or a government sponsored enterprise of the United States or of a state or political subdivision thereof; (C) loans secured by a deposit or share of a member; (D) loans secured by an interest in real property which is, or, from the proceeds of the loan, will become, residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this subclause, residential real property shall include single or multi-family dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis; (E) property acquired through the liquidation of defaulted loans described in subclause (D) of this clause; (F) any regular or residual interest in a REMIC, as such term is defined in section eight hundred sixty-D of the internal revenue code, but only in the proportion which the assets of such REMIC consist of property described in subclauses (A) through (E) of this clause, except that if ninety-five percent or more of the assets of such REMIC are assets described in such subclauses, the entire interest in the REMIC shall qualify; (G) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is, or from the proceeds of the loan, will become, the type of property described in subclause (D) of this clause and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans that maintain as security the type of property described in subclause (D) of this clause; (H) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations; (I) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities; (J) loans made for the payment of expenses of college or university education or vocational training; (K) property used by the taxpayer in support of business which consists principally of acquiring the savings of the public and investing in loans; and (L) loans for which the taxpayer is the creditor and which are wholly secured by loans described in subclause (D) of this clause.

The value of accrued interest receivable and any loss-sharing commitment or other loan guaranty by a governmental agency will be considered part of the basis in the loans to which the accrued interest or loss protection applies.

(ii) At the election of the taxpayer, the percentage specified in clause (i) of this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. The taxpayer can elect to compute an average using the assets measured on the first day of the taxable year and on the last day of each subsequent quarter, or month or day during the taxable year. This election may be made annually.

(iii) For purposes of subclause (D) of clause (i) of this subparagraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use, measured, at the taxpayer's election, by using square footage or gross rental revenue, and determined as of the time the loan is made.

(iv) For purposes of subclause (D) of clause (i) of this subparagraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; provided, however, this shall not apply for any taxable year unless, within such three-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under subclause (F) of clause (i) of this subparagraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in subclauses (A) through (E) under principles similar to the principle of such subclause (F), except that if such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of such subclause (F).

(3) For purposes of this paragraph, a "thrift institution" is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(t) Subtraction modification for qualified affordable housing and low income community loans.

(1) A taxpayer that owns a qualifying loan within the meaning of clause (iii) of subparagraph two of this paragraph shall be allowed a deduction in computing entire net income equal to the amount computed under subparagraph two of this paragraph.

(2)(i) The deduction allowed in subparagraph one of this paragraph shall be equal to:

(A) if the total average value during the taxable year of the assets of the taxpayer, or if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section 11-654.3 of this subchapter, does not exceed one hundred billion dollars, the taxpayer's net interest income from qualifying loans, or

(B) if the total average value during the taxable year of the assets of the taxpayer, or if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section 11-654.3 of this subchapter, exceeds one hundred billion dollars but is less than one hundred fifty billion dollars, the taxpayer's net interest income from qualifying loans multiplied by a fraction, the numerator of which is one hundred fifty billion dollars minus the total average value during the taxable year of the assets of the taxpayer, or if the taxpayer is included in a combined report, the assets of the combined reporting group of the taxpayer under section 11-654.3 of this subchapter, and the denominator of which is fifty billion dollars.

(ii)(A) Net interest income from qualifying loans shall mean the taxpayer's net interest income from loans during the taxable year multiplied by a fraction, the numerator of which is the gross interest income during the taxable year from qualifying loans and the denominator of which is the gross interest income from all loans.

(B) Net interest income from loans shall mean gross interest income during the taxable year from loans less gross interest expense from loans. Gross interest expense from loans is determined by multiplying

gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the taxpayer during the taxable year and the denominator of which is the average total assets of the taxpayer for the year.

(C) Measurement of assets. For purposes of this paragraph:

(I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator, if applicable, of the taxpayers included in the combined return. In addition, total assets includes leased real property that is not properly reflected on a balance sheet.

(II) Assets will only be included if the income or expenses of which are properly reflected, or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the taxpayer's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

(III) Tangible real and personal property, such as buildings, land, machinery, and equipment, shall be valued at cost. Leased real property that is not properly reflected on a balance sheet will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

(IV) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

(iii) A qualifying loan is a loan that meets the conditions specified in subclause (A) through subclause (E) of this clause.

(A) The loan is originated by the taxpayer lender or purchased by the taxpayer immediately after its origination in connection with a commitment to purchase made by the taxpayer prior to the loan's origination.

(B) Satisfies conditions of item (I) or (II) of this subclause.

(I) The loan is secured by a housing accommodation located within the city, where there are rental units in such housing accommodation that are qualifying units, which for purposes of this subclause, means units subject to rent control, rent stabilization or to a regulatory agreement, provided that, each such loan will be considered a qualifying loan for purposes of this paragraph only in proportion to a percentage equal to the number of qualifying units divided by the total number of all residential and commercial units located on the site of the real property securing the loan, as determined as of the date the loan is made.

(II) To the extent not included in item (I) of this subclause, loans secured by residential real property located in a low-income community. For purposes of this paragraph, low-income community areas are census tracts within the city in which the poverty rate for such tract is at least twenty percent and the median family income for such tract does not exceed eighty percent of metropolitan area median family income. This determination will be made by reference to the poverty and median family income census data for application of section forty-five-D of the internal revenue code.

(C) The loan is not treated as a qualifying loan in the computation of a subtraction from entire net income pursuant to paragraph (q) of this subdivision.

(D) If the taxpayer applies a subtraction pursuant to paragraph (r) of this subdivision, the interest or net gains from the loan are not recognized by a captive REIT as defined in section 11-601 of this chapter.

(E) A loan that meets the definition of a qualifying loan in a prior taxable year, including years prior to the effective date of this paragraph, remains a qualifying loan in taxable years during and after which such loan is acquired by another corporation in the taxpayer's combined reporting group under section 11-654.3 of this subchapter.

(iv) For purposes of this paragraph, the following terms shall mean:

(A) "Housing accommodations" shall mean a multiple dwelling that contains at least five dwelling units together with the land on which such structure is situated.

(B) "Regulatory agreement" shall mean a written agreement with or approved by any local, municipal, state, federal or other government agency that requires the provision of housing accommodations for families and persons of low or moderate income, and binds the owner of such real property and its successors and assigns. A regulatory agreement may include such other terms and conditions as the locality, municipality, state, or federal government shall determine.

(C) "Rent stabilization" shall mean, collectively, the rent stabilization law of nineteen hundred sixty-nine, the rent stabilization code, and the emergency tenant protection act of nineteen seventy-four, together with any successor statutes or regulations addressing substantially the same subject matter.

9. (a) The term "calendar year" means a period of twelve calendar months, or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter, ending on the thirty-first day of December, provided the taxpayer keeps its books on the basis of such period or on the basis of any period ending on any day other than the last day of a calendar month, or provided the taxpayer does not keep books, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a fiscal year to a calendar year, the period from the close of its last old fiscal year up to and including the following December thirty-first.

(b) The term "fiscal year" means a period of twelve calendar months, or any shorter period beginning on the date the taxpayer becomes subject to the tax imposed by this subchapter, ending on the last day of any month other than December, provided the taxpayer keeps its books on the basis of such period, and includes, in case the taxpayer changes the period on the basis of which it keeps its books from a calendar year to a fiscal year or from one fiscal year to another fiscal year, the period from the close of its last old calendar or fiscal year up to the date designated as the close of its new fiscal year.

10. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest property and evidences of debt.

11. The term "internal revenue code" means, unless otherwise specifically stated in this subchapter, the internal revenue code of 1986, as amended.

12. The term "combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the internal revenue code:

(a) more than fifty percent of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the internal revenue code and not exempt from federal income tax;

(b) that is licensed as a captive insurance company under the laws of this state or another jurisdiction;

(c) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent and/or members of its affiliated group; and

(d) fifty percent or less of whose gross receipts for the taxable year consist of premiums from arrangements that constitute insurance for federal income tax purposes.

For purposes of this subdivision, "affiliated group" has the same meaning as that term is given in section fifteen hundred four of the internal revenue code, except that the term "common parent corporation" in that section is deemed to mean any person, as defined in section seven thousand seven hundred one of the internal revenue code and references to "at least eighty percent" in section fifteen hundred four of the internal revenue code are to be read as "fifty percent or more;" section fifteen hundred four of the internal revenue code is to be read without regard to the exclusions provided for in subsection (b) of that section; "premiums" has the same meaning as that term is given in paragraph one of subdivision (c) of section fifteen hundred ten of the tax law, except that it includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance or annuity contracts that do not provide bona fide insurance, reinsurance or annuity benefits; and "gross receipts" includes the amounts included in gross receipts for purposes of paragraph fifteen of subsection (c) of section five hundred one of the internal revenue code, except that those amounts also include all premiums as defined in this subdivision.

13. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation as defined in subdivision one of this section, or a trust or estate that is separate from its owner under part one of subchapter J of chapter one of subtitle A of the internal revenue code; and the term "partner" includes a member in such syndicate, group, pool, joint venture, or organization.

§ 11-653 Imposition of tax; exemptions. 1. (a) For the privilege of doing business, or of employing capital, or of owning or leasing property in the city in a corporate or organized capacity, or of maintaining an office in the city, or of deriving receipts from activity in the city, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a tax, upon the basis of its business income, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as hereinafter provided, on or before the fifteenth day of March next succeeding the close of each such year, or, in the case of a taxpayer which reports on the basis of a fiscal year, within two and one-half months after the close of such fiscal year, and shall be paid as hereinafter provided.

(b) A corporation is deriving receipts from activity in the city if it has receipts within the city of one million dollars or more in a taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the allocation rules set forth in section 11-654.2 of this subchapter, and the term "receipts within the city" means the receipts included in the numerator of the receipts fraction determined under section 11-654.2 of this subchapter. For purposes of

this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation.

(c) A corporation is doing business in the city if (1) it has issued credit cards to one thousand or more customers who have a mailing address within the city as of the last day of its taxable year, (2) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in the city to whom the corporation remitted payments for credit card transactions during the taxable year, or (3) the sum of the number of customers described in subparagraph one of this paragraph plus the number of locations covered by its contracts described in subparagraph two of this paragraph equals one thousand or more. As used in this subdivision, the term "credit card" includes bank, credit, travel and entertainment cards.

(d)(1) A corporation with less than one million dollars but at least ten thousand dollars of receipts within the city in a taxable year that is part of a unitary group that meets the ownership test under section 11-654.3 of this subchapter is deriving receipts from activity in the city if the receipts within the city of the members of the unitary group that have at least ten thousand dollars of receipts within the city in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

(2) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c) of this subdivision, and is part of a unitary group that meets the ownership test under section 11-654.3 of this subchapter, is doing business in the city if the number of customers, locations, or customers and locations, within the city of the members of the unitary group that have at least ten customers, locations, or customers and locations, within the city in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

(3) For purposes of this paragraph, any corporation described in paragraph (c) of subdivision two of section 11-654.3 of this subchapter shall not be considered.

(e) At the end of each year, the commissioner shall review the cumulative percentage change in the consumer price index. The commissioner shall adjust the receipt thresholds set forth in this subdivision if the consumer price index has changed by ten percent or more since January first, two thousand twenty-two, or since the date that the thresholds were last adjusted under this subdivision. The thresholds shall be adjusted to reflect the cumulative percentage change in the consumer price index. The adjusted thresholds shall be rounded to the nearest one thousand dollars. As used in this paragraph, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(f) If a partnership is doing business, employing capital, owning or leasing property in the city, or maintaining an office in the city, or deriving receipts from activity in the city, any corporation that is a partner in such partnership shall be subject to tax under this subchapter as described in the regulations of the commissioner of finance.

2. A foreign corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office

in the city, or deriving receipts from activity in the city, for the purposes of this subchapter, by reason of:

(a) the maintenance of cash balances with banks or trust companies in the city, or

(b) the ownership of shares of stock or securities kept in the city, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or

(c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or

(d) the maintenance of an office in the city by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in the city, and does not employ capital or own or lease property in the city, or

(e) the keeping of books or records of a corporation in the city if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in the city, or

(f) any combination of such activities.

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in the city, or deriving receipts from activity in the city, for the purposes of this subchapter, if its activities in the city are limited solely to:

(a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code, or:

(b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code, or

(c) any combination of activities described in paragraphs (a) and (b) of this subdivision.

An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause three of the opening paragraph of subdivision eight of section 11-652 of this subchapter shall not be subject to tax under this subchapter for that taxable year. For purposes of this subchapter, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

3. Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court, who conducts the business of any corporation, shall be subject to the tax imposed by this subchapter in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation. A dissolved corporation which continues to conduct business shall also be subject to the tax imposed by this subchapter.

4. (a) Corporations subject to tax under chapter eleven of this title, any trust company organized under a law of this state all of the stock

of which is owned by not less than twenty savings banks organized under a law of this state, housing companies organized and operating pursuant to the provisions of article two of the private housing finance law, housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law, corporations described in section three of the tax law, a corporation principally engaged in the operation of marine vessels whose activities in the city are limited exclusively to the use of property in interstate or foreign commerce, provided, however, such a corporation will not be subject to tax under this subchapter solely because it maintains an office in the city, or employs capital in the city, in connection with such use of property, a corporation principally engaged in the conduct of a ferry business and operating between any of the boroughs of the city under a lease granted by the city and a corporation principally engaged in the conduct of an aviation, steamboat, ferry or navigation business, or two or more of such businesses, all of the capital stock of which is owned by a municipal corporation of this state, shall not be subject to tax under this subchapter; provided, however, that any corporation, other than (1) a utility corporation subject to the supervision of the state department of public service, and (2) for taxable years beginning on or after August first, two thousand two, a utility as defined in subdivision six of section 11-1101 of this title, which is subject to tax under chapter eleven of this title as a vendor of utility services, shall be subject to tax under this subchapter, but in computing the tax imposed by this section pursuant to the provisions of clause (i) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter, business income allocated to the city pursuant to paragraph (a) of subdivision three of such section shall be reduced by the percentage which such corporation's gross operating income subject to tax under chapter eleven of this title is of its gross operating income.

(b) The term "gross operating income", when used in paragraph (a) of this subdivision, means receipts received in or by reason of any transaction had and consummated in the city, including cash, credits and property of any kind or nature, whether or not such transaction is made for profit, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever, interest or discount paid or any other expenses whatsoever.

(c) If it shall appear to the commissioner of finance that the application of the provisions of paragraph (a) of this subdivision, does not fairly and equitably reflect the portion of the taxpayer's business income allocable to the city which is attributable to its city activities which are not taxable under chapter eleven of this title, the commissioner of finance may prescribe other means or methods of determining such portion, including the use of the books and records of the taxpayer, if the commissioner of finance finds that such means or methods used in keeping them fairly and equitably reflect such portion.

5. Intentionally omitted.

6. Intentionally omitted.

7. For any taxable year of a real estate investment trust, as defined in section eight hundred fifty-six of the internal revenue code, in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either clause (i) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter, or clause (iv), whichever is greater. In the case of such a real estate investment

trust, including a captive REIT as defined in section 11-601 of this chapter, the term "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 such code, subject to the modifications required by subdivision eight of section 11-652 of this subchapter including the modifications required by paragraphs (d) and (e) of subdivision three of section 11-654 of this subchapter.

8. For any taxable year of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either clause one or four of subparagraph (a) of paragraph E of subdivision one of section 11-654 of this subchapter, whichever is greater. In the case of such a regulated investment company, including a captive RIC as defined in section 11-601 of this chapter, the term "entire net income" used in subdivision one of this section 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 subdivision eight of section 11-652 of this subchapter, including the modification required by paragraphs (d) and (e) of subdivision three of section 11-654 of this subchapter.

9. An organization described in paragraph two or twenty-five of subsection (c) of section five hundred one of the internal revenue code shall be exempt from all taxes imposed by this subchapter.

§ 11-654 Computation of tax. 1. (a) Intentionally omitted.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) The tax imposed by subdivision one of section 11-653 of this subchapter shall be, in the case of each taxpayer:

(1) whichever of the following amounts is the greatest:

(i) an amount computed on its business income or the portion of such business income allocated within the city as hereinafter provided, subject to the application of paragraphs (j) and (k) of this subdivision and any modification required by paragraphs (d) and (e) of subdivision three of this section, at the rate of (1) nine per centum for financial corporations, as defined in this clause, or (2) eight and eighty-five one hundredths per centum for all other corporations. For purposes of this clause, "financial corporation" means a corporation or, if the corporation is included in a combined group, a combined group, that (A) has total assets reflected on its balance sheet at the end of its taxable year in excess of one hundred billion dollars, computed under generally accepted accounting principles and (B)(I) allocates more than fifty percent of the receipts included in the denominator of its receipts fraction, determined under section 11-654.2 of this subchapter, pursuant to subdivision five of section 11-654.2 of this subchapter for its taxable year, or (II) is itself or is included in a combined group in which more than fifty percent of the total assets reflected on its balance sheet at the end of its taxable year are held by one or more corporations that are classified as (a) registered under state law as a bank

holding company or registered under the Federal Bank Holding Company Act of 1956 (12 U.S.C. § 1841, et seq., as amended), or registered as a savings and loan holding company under the Federal National Housing Act (12 U.S.C. 1701, as amended), (b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. 21 et. seq., (c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(b)(1), (d) a bank, savings association, or thrift institution incorporated or organized under the laws of any state, (e) a corporation organized under the provisions of 12 U.S.C. §§ 611 to 631, (f) an agency or branch or a foreign depository as defined in 12 U.S.C. § 3101, (g) a registered securities or commodities broker or dealer registered as such by the securities and exchange commission or the commodities futures trading commission, which shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at title 17, part 240, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12), or (h) any corporation whose voting stock is more than fifty percent owned, directly or indirectly, by any person or business entity described in subitems (a) through (g) of this item, other than an insurance company taxable under article thirty-three of the tax law; or

(ii) an amount computed by multiplying its total business capital, or the portion thereof allocated within the city, as hereinafter provided,

(A) except as provided in subclauses (B) and (C) of this clause, by fifteen one-hundredths per centum;

(B) in the case of a cooperative housing corporation as defined in the internal revenue code, by four one-hundredths per centum;

(C) in the case of the portion of total business capital directly attributable to a corporation that is or would be taxable under chapter eleven of this title, except for a vendor of utility services that is taxable under both chapter eleven of this title and this subchapter, or a corporation that would have been taxable as an insurance corporation under former part IV, title R, chapter forty-six of the administrative code of the city of New York as in effect on June thirtieth, nineteen hundred seventy-four, by seven and one-half one-hundredths per centum; and

(D) subtracting ten thousand dollars from the sum of the amount of tax computed pursuant to subclauses (A), (B) and (C) of this clause, provided that if such amount of tax is less than zero it shall be deemed to be zero; and

(E) provided that in no event shall the amount of tax computed pursuant to subclause (D) of this clause on the taxpayer's total business capital, or the portion thereof allocated within the city, exceed ten million dollars, or

(iii) Intentionally omitted.

(iv) If New York city receipts are:

| | Fixed dollar minimum tax is: |
|---|---|
| Not more than $100,000 | $25 |
| More than $100,000 but not over $250,000 | $75 |
| More than $250,000 but not over $500,000 | $175 |
| More than $500,000 but not over $1,000,000 | $500 |
| More than $1,000,000 but not over $5,000,000 | $1,500 |
| More than $5,000,000 but not over $25,000,000 | $3,500 |
| More than $25,000,000 but not over $50,000,000 | $5,000 |
| More than $50,000,000 but not over $100,000,000 | $10,000 |

| | |
|---|---|
| More than $100,000,000 but not over $250,000,000 | $20,000 |
| More than $250,000,000 but not over $500,000,000 | $50,000 |
| More than $500,000,000 but not over $1,000,000,000 | $100,000 |
| Over $1,000,000,000 | $200,000 |

For purposes of this clause, New York city receipts are the receipts computed in accordance with section 11-654.2 of this subchapter for the taxable year. If the taxable year is less than twelve months, the amount prescribed by this clause shall be reduced by twenty-five percent if the period for which the taxpayer is subject to tax is more than six months but not more than nine months and by fifty percent if the period for which the taxpayer is subject to tax is not more than six months. If the taxable year is less than twelve months, the amount of New York city receipts for purposes of this clause is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve.

(f) Intentionally omitted.

(g) Intentionally omitted.

(h) Intentionally omitted.

(i) Intentionally omitted.

(j) (1) If the amount of business income allocated within the city as hereinafter provided is less than one million dollars, the amount computed in clause (i) of subparagraph one of paragraph (e) of this subdivision shall be at the rate of six and five-tenths per centum of the amount of business income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section;

(2) Subject to subparagraph three of this paragraph, if the amount of business income allocated within the city as hereinafter provided is one million dollars or greater but less than one million five hundred thousand dollars, the amount computed in clause (i) of subparagraph one of paragraph (e) of this subdivision shall be at the rate of (i) six and five-tenths per centum, plus (ii) two and thirty-five one-hundredths per centum multiplied by a fraction the numerator of which is allocated business income less one million dollars and the denominator of which is five hundred thousand dollars, of the amount of business income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section;

(3) Provided, however, notwithstanding anything to the contrary, if the amount of business income before allocation is two million dollars or greater but less than three million dollars, the rate of tax provided for in this paragraph shall not be less than (i) six and five-tenths per centum, plus (ii) two and thirty-five one-hundredths per centum multiplied by a fraction the numerator of which is business income before allocation less two million dollars and the denominator of which is one million dollars, and provided, however, notwithstanding anything to the contrary, if the amount of business income before allocation is three million dollars or greater, the rate of tax shall be eight and eighty-five one-hundredths percentum or, in the case of a financial corporation, as defined in clause (i) of subparagraph one of paragraph (e) of subdivision one of section 11-654, if the amount of business income before allocation is three million dollars or greater the rate of tax shall be nine per centum.

(k)(1) For qualified New York manufacturing corporations as defined in subparagraph four of this paragraph, if the amount of business income

allocated within the city as hereinafter provided is less than ten million dollars, the amount computed in clause (i) of subparagraph one of paragraph (e) of this subdivision shall be at the rate of four and four hundred twenty-five one thousandths per centum, of its business income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section;

(2) Subject to subparagraph three of this paragraph for qualified New York manufacturing corporations as defined in subparagraph four of this paragraph, if the amount of business income allocated within the city as hereinafter provided is ten million dollars or greater but less than twenty million dollars, the amount computed in clause (i) of subparagraph one of paragraph (e) of this subdivision shall be at the rate of (i) four and four hundred twenty-five one-thousandths per centum, plus (ii) four and four hundred twenty-five one-thousandths per centum multiplied by a fraction the numerator of which is allocated business income less ten million dollars and the denominator of which is ten million dollars, of its business income or the portion of such business income allocated within the city as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section;

(3) Notwithstanding anything to the contrary, if the amount of business income before allocation is twenty million dollars or greater but less than forty million dollars, the rate of tax provided for in this paragraph shall not be less than (i) four and four hundred twenty-five one-thousandths per centum, plus (ii) four and four hundred twenty-five one-thousandths per centum multiplied by a fraction the numerator of which is business income before allocation less twenty million dollars and the denominator of which is twenty million dollars, and provided, however, notwithstanding anything to the contrary, if the amount of business income before allocation is forty million dollars or greater, the rate of tax shall be eight and eighty-five one-hundredths per centum.

(4)(i) As used in this subparagraph, the term "manufacturing corporation" means a corporation principally engaged in the manufacturing and sale thereof of tangible personal property; and the term "manufacturing" includes the process, including the assembly process (A) of working raw materials into wares suitable for use or (B) which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process, by the use of machinery, tools, appliances and other similar equipment. Moreover, in the case of a combined report, a combined group shall be considered a "manufacturing corporation" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or, in the case of a combined report, a combined group, shall be "principally engaged" in activities described in this subparagraph if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated.

(ii) A "qualified New York manufacturing corporation" is a manufacturing corporation that has property in the state that is described in subparagraph five of this paragraph and either (A) the adjusted basis of such property for New York state tax purposes at the close of the taxa-

ble year is at least one million dollars or (B) more than fifty percent of its real and personal property is located in the state.

(5) For purposes of subclause (A) of clause (ii) of subparagraph four of this paragraph, property includes tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in subsection (d) of section one hundred seventy-nine of the internal revenue code, have a situs in the state and are principally used by the taxpayer in the production of goods by manufacturing. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

2. The amount of investment capital and business capital shall be determined by taking the average value of the gross assets included therein, less liabilities deductible therefrom pursuant to the provisions of subdivisions four and six of section 11-652 of this subchapter, and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve. For purposes of this subdivision, real property and marketable securities shall be valued at fair market value and the value of personal property other than marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles.

3. The portion of the business income of a taxpayer to be allocated to the city shall be determined as follows:

(a) multiply its business income by a business allocation percentage to be determined by:

(1) ascertaining the percentage which the average value of the taxpayer's real and tangible personal property, whether owned or rented to it, within the city during the period covered by its report bears to the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, wherever situated during such period. For the purpose of this subparagraph, the term "value of the taxpayer's real and tangible personal property" shall mean the adjusted bases of such properties for federal income tax purposes, except that in the case of rented property such value shall mean the product of (i) eight and (ii) the gross rents payable for the rental of such property during the taxable year; provided, however, that the taxpayer may make a one-time, revocable election, pursuant to regulations promulgated by the commissioner of finance to use fair market value as the value of all of its real and tangible personal property, provided that such election is made on or before the due date for filing a report under section 11-655 of this subchapter for the taxpayer's first taxable year commencing on or after January first, two thousand fifteen and provided that such election shall not apply to any taxable year with respect to which the taxpayer is included on a combined report unless each of the taxpayers included on such report has made such an election which remains in effect for such year or to any taxpayer that was subject to tax under subchapter two of this chapter and did not have an election in effect

under subparagraph one of paragraph (a) of subdivision three of section 11-604 of this chapter on December thirty-first, two thousand fourteen;

(2) ascertaining the percentage determined under section 11-654.2 of this subchapter;

(3) ascertaining the percentage of the total wages, salaries and other personal service compensation, similarly computed, during such period of employees within the city, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's employees within and without the city, except general executive officers; and

(4) adding together the percentages so determined and dividing the result by the number of percentages.

(5) Intentionally omitted.

(6) Intentionally omitted.

(7) Intentionally omitted.

(8) Intentionally omitted.

(9) Intentionally omitted.

(10) Notwithstanding subparagraphs one through four of this paragraph, the business allocation percentage, to the extent that it is computed by reference to the percentages determined under subparagraphs one, two and three of this paragraph, shall be computed in the manner set forth in this subparagraph.

(i) Intentionally omitted.

(ii) Intentionally omitted.

(iii) Intentionally omitted.

(iv) Intentionally omitted.

(v) Intentionally omitted.

(vi) Intentionally omitted.

(vii) For taxable years beginning in two thousand fifteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of ten percent and the percentage determined under subparagraph one of this paragraph;

(B) the product of eighty percent and the percentage determined under subparagraph two of this paragraph; and

(C) the product of ten percent and the percentage determined under subparagraph three of this paragraph.

(viii) For taxable years beginning in two thousand sixteen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of six and one-half percent and the percentage determined under subparagraph one of this paragraph;

(B) the product of eighty-seven percent and the percentage determined under subparagraph two of this paragraph; and

(C) the product of six and one-half percent and the percentage determined under subparagraph three of this paragraph.

(ix) For taxable years beginning in two thousand seventeen, the business allocation percentage shall be determined by adding together the following percentages:

(A) the product of three and one-half percent and the percentage determined under subparagraph one of this paragraph;

(B) the product of ninety-three percent and the percentage determined under subparagraph two of this paragraph; and

(C) the product of three and one-half percent and the percentage determined under subparagraph three of this paragraph.

(x) For taxable years beginning after two thousand seventeen, the business allocation percentage shall be the percentage determined under subparagraph two of this paragraph.

(xi) The commissioner of finance shall promulgate rules necessary to implement the provisions of this subparagraph under such circumstances where any of the percentages to be determined under subparagraph one, two or three of this paragraph cannot be determined because the taxpayer has no property, receipts or wages within or without the city.

(xii) Notwithstanding the provisions of clauses (viii), (ix), and (x) of this subparagraph, for taxable years beginning on or after January first, two thousand eighteen, a taxpayer that has fifty million dollars or less of receipts allocated to the city as determined under section 11-654.2 of this subchapter, or, if the taxpayer is included in a combined group, a combined group that has fifty million dollars or less of receipts allocated to the city as determined under section 11-654.2 of this subchapter, may make a one-time election to determine its business allocation percentage by adding together the following percentages:

(A) the product of three and one-half percent and the percentage determined under subparagraph one of this paragraph;

(B) the product of ninety-three percent and the percentage determined under subparagraph two of this paragraph; and

(C) the product of three and one-half percent and the percentage determined under subparagraph three of this paragraph.

The election provided for in this clause must be made on an original or amended report filed pursuant to section 11-655 of this subchapter for the taxpayer's or, if the taxpayer is included in a combined group, the combined group's, first taxable year commencing on or after January first, two thousand eighteen and shall remain in effect until revoked by the taxpayer, or if the taxpayer is included in a combined group, the combined group. An election shall be revoked under this clause on an original or amended report filed pursuant to section 11-655 of this subchapter for the taxpayer's, or if the taxpayer is included in a combined group, the combined group's, first taxable year with respect to which such revocation is to be effective. If the taxpayer is a member of a combined group, an election or revocation by the taxpayer under this clause shall apply to all members of the combined group.

(11) A foreign air carrier described in the first sentence of subparagraph one of paragraph (c-1) of subdivision eight of section 11-652 of this subchapter shall determine its business allocation percentage pursuant to subparagraphs one through four of this paragraph, as modified by subparagraph ten of this paragraph, except that the numerators and denominators involved in such computation shall exclude property to the extent employed in generating income excluded from entire net income for the taxable year pursuant to paragraph (c-1) of subdivision eight of section 11-652 of this subchapter, exclude such receipts as are excluded from entire net income for the taxable year pursuant to paragraph (c-1) of subdivision eight of section 11-652 of this subchapter, and exclude wages, salaries or other personal service compensation which are directly attributable to the generation of income excluded from entire net income for the taxable year pursuant to paragraph (c-1) of subdivision eight of section 11-652 of this subchapter.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of paragraph (d) of subdivision three of section

11-604 of this chapter or subdivision (k) of section 11-641 of this chapter in any period in which the taxpayer was subject to tax under subchapter two of this chapter, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of paragraph (d) of subdivision three of section 11-604 of this chapter. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in subsection (d) of section one hundred seventy-nine of the internal revenue code.

(e) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to subparagraph one or two of paragraph (e) of subdivision three of section 11-604 of this chapter in any period the taxpayer was subject to tax under subchapter two of this chapter, the gain or loss thereon entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added to or subtracted from the portion of entire net income allocated within the city the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to subparagraph one or two of paragraph (e) of subdivision three of section 11-604 of this chapter. Provided, however, that no loss shall be recognized for the purposes of this subparagraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in subsection (d) of section one hundred seventy-nine of the internal revenue code.

4. The portion of the business capital of a taxpayer to be allocated within the city shall be determined by multiplying the amount thereof by the business allocation percentage determined as hereinabove provided.

4-a. A corporation that is a partner in a partnership shall compute tax under this subchapter using any method required or permitted in regulations of the commissioner of finance.

5. Intentionally omitted.

6. Intentionally omitted.

7. Intentionally omitted.

8. Intentionally omitted.

9. If it shall appear to the commissioner of finance that any business allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the city, the commissioner of finance shall be authorized in his or her discretion to adjust it, or the taxpayer may request that the commissioner of finance adjust it, by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses, purchases, contract values, minus subcontract values, (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom, is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the city. The party seeking the adjustment shall bear the burden of proof to demonstrate that the business allocation percent-

age determined pursuant to this section does not result in a proper reflection of the taxpayer's income or capital within the city and that the proposed adjustment is appropriate. The commissioner of finance from time to time shall publish all rulings of general public interest with respect to any application of the provisions of this subdivision.

10. Intentionally omitted.

11. Intentionally omitted.

12. Intentionally omitted.

13. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner hereinafter provided in this section.

(1)(i) Where a taxpayer shall have relocated to the city from a location outside the state, and by such relocation shall have created a minimum of one hundred industrial or commercial employment opportunities; and where such taxpayer shall have entered into a written lease for the relocation premises, the terms of which lease provide for increased additional payments to the landlord which are based solely and directly upon any increase or addition in real estate taxes imposed on the leased premises, the taxpayer upon approval and certification by the industrial and commercial incentive board as hereinafter provided shall be entitled to a credit against the tax imposed by this subchapter. The amount of such credit shall be an amount equal to the annual increased payments actually made by the taxpayer to the landlord which are solely and directly attributable to an increase or addition to the real estate tax imposed upon the leased premises. Such credit shall be allowed only to the extent that the taxpayer has not otherwise claimed said amount as a deduction against the tax imposed by this subchapter.

(ii) The industrial and commercial incentive board in approving and certifying to the qualifications of the taxpayer to receive such tax credit shall first determine that the applicant has met the requirements of this section, and further, that the granting of the tax credit to the applicant is in the "public interest". In determining that the granting of the tax credit is in the public interest, the board shall make affirmative findings that: the granting of the tax credit to the applicant will not effect an undue hardship on similar taxpayers already located within the city; the existence of this tax incentive has been instrumental in bringing about the relocation of the applicant to the city; and the granting of the tax credit will foster the economic recovery and economic development of the city.

(iii) The tax credit, if approved and certified by the industrial and commercial incentive board, must be utilized annually by the taxpayer for the length of the term of the lease or for a period not to exceed ten years from the date of relocation whichever period is shorter.

(2) When used in this subdivision:

(i) "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

(ii) "Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

(iii) "Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

(iv) "Retail" means the selling or otherwise disposing or furnishing of tangible goods or services directly to the ultimate user or consumer.

(v) "Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employees is not less than thirty hours during any given work week.

(vi) "Industrial and commercial incentive board" means the board created pursuant to part three of subchapter two of chapter two of this title.

(b) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter.

14. (a) In addition to any other credit allowed by this section, a taxpayer shall be allowed a credit against the tax imposed by this subchapter to be credited or refunded without interest, in the manner hereinafter provided in this section. The amount of such credit shall be:

(1) A maximum of three hundred dollars for each commercial employment opportunity and a maximum of five hundred dollars for each industrial employment opportunity relocated to the city from an area outside the state. Such credit shall be allowed to a taxpayer who relocates a minimum of ten employment opportunities. The credit shall be allowed against employment opportunity relocation costs incurred by the taxpayer. Such credit shall be allowed only to the extent that the taxpayer has not claimed a deduction for allowable employment opportunity relocation costs. The credit allowed hereunder may be taken by the taxpayer in whole or in part in the year in which the employment opportunity is relocated by such taxpayer or either of the two years succeeding such event, provided, however, no credit shall be allowed under this subdivision to a taxpayer for industrial employment opportunities relocated to premises (i) that are within an industrial business zone established pursuant to section 22-626 of the code of the preceding municipality and (ii) for which a binding contract to purchase or lease was first entered into by the taxpayer on or after July first, two thousand five.

The commissioner of finance is empowered to promulgate rules and regulations and to prescribe the form of application to be used by a taxpayer seeking the such credit.

(2) When used in this subdivision:

(i) "Employment opportunity" means the creation of a full time position of gainful employment for an industrial or commercial employee and the actual hiring of such employee for the said position.

(ii) "Industrial employee" means one engaged in the manufacture or assembling of tangible goods or the processing of raw materials.

(iii) "Commercial employee" means one engaged in the buying, selling or otherwise providing of goods or services other than on a retail basis.

(iv) "Retail" means the selling or otherwise disposing of tangible goods directly to the ultimate user or consumer.

(v) "Full time position" means the hiring of an industrial or commercial employee in a position of gainful employment where the number of hours worked by such employee is not less than thirty hours during any given work week.

(vi) "Employment opportunity relocation costs" means the costs incurred by the taxpayer in moving furniture, files, papers and office equipment into the city from a location outside the state; the costs incurred by the taxpayer in the moving and installation of machinery and equipment into the city from a location outside the state; the costs of

installation of telephones and other communications equipment required as a result of the relocation to the city from a location outside the state; the cost incurred in the purchase of office furniture and fixtures required as a result of the relocation to the city from a location outside the state; and the cost of renovation of the premises to be occupied as a result of the relocation; provided, however, that such renovation costs shall be allowable only to the extent that they do not exceed seventy-five cents per square foot of the total area utilized by the taxpayer in the occupied premises.

(b) The credit allowed under this section for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest in accordance with the provisions of section 11-677 of this chapter.

(c) 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 fourteen of section 11-604 of this chapter for an eligible employment relocation, a credit shall be allowed to the taxpayer under this subdivision for any tax year beginning on or after January first, two thousand fifteen, in the same amount and to the same extent that a credit, or the unused portion thereof, would have been allowed under subdivision fourteen of section 11-604 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.

15. Intentionally omitted.

16. Intentionally omitted.

17. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this subchapter. The amount of the credit shall be the amount determined by multiplying five hundred dollars or, in the case of a taxpayer that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, nineteen hundred ninety-five, one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are not within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of section 22-621 of the code of the preceding municipality is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursuant to subdivision (j) of such section is before July first, nineteen hundred ninety-five, the amount to be multiplied by the number of eligible aggregate employment shares shall be five hundred dollars, and if

the date of such relocation as determined pursuant to subdivision (j) of such section is on or after July first, nineteen hundred ninety-five, and before July first, two thousand, one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-622 of the code of the preceding municipality to take such credit against a gross receipts tax imposed by chapter eleven of this title; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code of the preceding municipality. For purposes of this subdivision, the terms "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the first taxable year during which such eligible aggregate employment shares are maintained with respect to such premises and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to such premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth succeeding taxable year during which such eligible aggregate employment shares are maintained with respect to such premises. Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(c) The credit allowable under this subdivision shall be deducted after the credit allowed by subdivision eighteen of this section, but prior to the deduction of any other credit allowed by this section.

(d) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code of the preceding municipality dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, the credits allowed under this subdivision, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to paragraph (a) of this subdivision, against the tax imposed by this chapter for the taxable year of such relocation and for the four taxable

years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this paragraph shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three, unless the date of such relocation is on or after July first, two thousand.

(e) Notwithstanding any other provision of this subdivision to the contrary, in the case of a taxpayer that has obtained, pursuant to chapter six-B of title twenty-two of the code of the preceding municipality, a certification of eligibility and has received, in a taxable year beginning before January first, two thousand fifteen, the credit set forth in subdivision seventeen of section 11-604 of this chapter or section 11-643.7 of this chapter for the relocation of an eligible business, a credit shall be allowed under this subdivision to the taxpayer for any taxable year beginning on or after January first, two thousand fifteen in the same amount and to the same extent that a credit would have been allowed under subdivision seventeen of section 11-604 of this chapter or section 11-643.7 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.

17-a. Intentionally omitted.

17-b. (a) In addition to any other credit allowed by this section, an eligible business that first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which it relocates shall be allowed a one-time credit against the tax imposed by this subchapter to be credited or refunded in the manner hereinafter provided in this subdivision. The amount of such credit shall be one thousand dollars per full-time employee; provided, however, that the amount of such credit shall not exceed the lesser of actual relocation costs or one hundred thousand dollars.

(b) When used in this subdivision, the following terms shall have the following meanings:

(1) "Eligible business" means any business subject to tax under this subchapter that (i) has been conducting substantial business operations and engaging primarily in industrial and manufacturing activities at one or more locations within the city of New York or outside the state of New York continuously during the twenty-four consecutive full months immediately preceding relocation, (ii) has leased the premises from which it relocates continuously during the twenty-four consecutive full months immediately preceding relocation, (iii) first enters into a binding contract on or after July first, two thousand five to purchase or lease eligible premises to which such business will relocate, and (iv) will be engaged primarily in industrial and manufacturing activities at such eligible premises.

(2) "Eligible premises" means premises located entirely within an industrial business zone. For any eligible business, an industrial business zone tax credit shall not be granted with respect to more than one eligible premises.

(3) "Full-time employee" means (i) one person gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked by such person is not less than thirty-five hours per week; or (ii) two persons gainfully employed in an eligible premises by an eligible business where the number of hours required to be worked

by each such person is more than fifteen hours per week but less than thirty-five hours per week.

(4) "Industrial business zone" means an area within the city of New York established pursuant to section 22-626 of the code of the preceding municipality.

(5) "Industrial business zone tax credit" means a credit, as provided for in this subdivision, against a tax imposed under this subchapter.

(6) "Industrial and manufacturing activities" means activities involving the assembly of goods to create a different article, or the processing, fabrication, or packaging of goods. Industrial and manufacturing activities shall not include waste management or utility services.

(7) "Relocation" means the physical relocation of furniture, fixtures, equipment, machinery and supplies directly to an eligible premises, from one or more locations of an eligible business, including at least one location at which such business conducts substantial business operations and engages primarily in industrial and manufacturing activities. For purposes of this subdivision, the date of relocation shall be (i) the date of the completion of the relocation to the eligible premises or (ii) ninety days from the commencement of the relocation to the eligible premises, whichever is earlier.

(8) "Relocation costs" means costs incurred in the relocation of such furniture, fixtures, equipment, machinery and supplies, including, but not limited to, the cost of dismantling and reassembling equipment and the cost of floor preparation necessary for the reassembly of the equipment. Relocation costs shall include only such costs that are incurred during the ninety-day period immediately following the commencement of the relocation to an eligible premises. Relocation costs shall not include costs for structural or capital improvements or items purchased in connection with the relocation.

(c) The credit allowed under this subdivision for any taxable year shall be deemed to be an overpayment of tax by the taxpayer to be credited or refunded without interest, in accordance with the provisions of section 11-677 of this chapter.

(d) The number of full-time employees for the purposes of calculating an industrial business tax credit shall be the average number of full-time employees, calculated on a weekly basis, employed in the eligible premises by the eligible business in the fifty-two week period immediately following the earlier of (1) the date of the completion of the relocation to eligible premises or (2) ninety days from the commencement of the relocation to the eligible premises.

(e) The credit allowed under this subdivision must be taken by the taxpayer in the taxable year in which such twelve month period selected by the taxpayer ends.

(f) For the purposes of calculating entire net income in the taxable year that an industrial business tax credit is allowed, a taxpayer must add back the amount of the credit allowed under this subdivision, to the extent of any relocation costs deducted in the current taxable year or a prior taxable year in calculating federal taxable income.

(g) The credit allowed under this subdivision shall not be granted for an eligible business for more than one relocation, provided, however, an industrial business tax credit shall not be granted if the eligible business receives benefits pursuant to chapter six-B or six-C of title twenty-two of the code of the preceding municipality, through a grant program administered by the business relocation assistance corporation, or through the New York city printers relocation fund grant.

(h) The commissioner of finance is authorized to promulgate rules and regulations and to prescribe forms necessary to effectuate the purposes of this subdivision.

18. (a) If a corporation is a partner in an unincorporated business taxable under chapter five of this title, and is required to include in entire net income its distributive share of income, gain, loss and deductions of, or guaranteed payments from, such unincorporated business, such corporation shall be allowed a credit against the tax imposed by this subchapter equal to the lesser of the amounts determined in subparagraphs one and two of this paragraph:

(1) The amount determined in this subparagraph is the product of (i) the sum of (A) the tax imposed by chapter five of this title on the unincorporated business for its taxable year ending within or with the taxable year of the corporation and paid by the unincorporated business and (B) the amount of any credit or credits taken by the unincorporated business under section 11-503 of this title, except the credit allowed by subdivision (b) of section 11-503 of this title, for its taxable year ending within or with the taxable year of the corporation, to the extent that such credits do not reduce such unincorporated business's tax below zero, and (ii) a fraction, the numerator of which is the net total of the corporation's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(2) The amount determined in this subparagraph is the product of (i) the excess of (A) the tax computed under clause (i) of subparagraph one of paragraph (e) of subdivision one of this section, without allowance of any credits allowed by this section, over (B) the tax so computed, determined as if the corporation had no such distributive share or guaranteed payments with respect to the unincorporated business, and (ii) 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; provided that the amounts computed in subclauses (A) and (B) of clause (i) of this subparagraph shall be computed with the following modifications:

(A) such amounts shall be computed without taking into account any carryforward or carryback by the partner of a net operating loss or a prior net operation loss conversion subtraction;

(B) if, prior to taking into account any distributive share or guaranteed payments from any unincorporated business or any net operating loss carryforward or carryback, the entire net income of the partner is less than zero, such entire net income shall be treated as zero; and

(C) if such partner's net total distributive share of income, gain, loss and deductions of, and guaranteed payments from, any unincorporated business is less than zero, such net total shall be treated as zero. The amount determined in this subparagraph shall not be less than zero.

(b) (1) Notwithstanding anything to the contrary in paragraph (a) of 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

of the fraction described in clause (ii) of such subparagraph one shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all of the partners of the unincorporated business within the combined group for which such net total, as separately determined for each partner, is greater than zero, and the denominator of such fraction shall be the sum of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business of all partners in the unincorporated business for whom or which such net total, as separately determined for each partner, is greater than zero.

(d) Notwithstanding any other provision of this subchapter, the credit allowable under this subdivision shall be taken prior to the taking of any other credit allowed by this section. Notwithstanding any other provision of this subchapter, the application of this subdivision shall not change the basis on which the taxpayer's tax is computed under paragraph (e) of subdivision one of this section.

19. Lower Manhattan relocation and employment assistance credit. (a) In addition to any other credit allowed by this section, a taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this subchapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the taxable year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; provided, further, that no credit shall be allowed under this subdivision to any taxpayer that has elected pursuant to subdivision (d) of section 22-624 of the code of the preceding municipality to take such credit against a gross receipts tax imposed under chapter eleven of this title. For purposes of this subdivision, the terms "eligible aggregate employment shares," "eligible premises," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code of the preceding municipality.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable year of the relocation and for any of the twelve succeeding taxable years during which eligible aggregate employment shares are maintained with respect to eligible premises; provided that the credit allowed for the twelfth succeeding taxable year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding taxable year by the lesser of one and a fraction the numerator of which is such number of days in the taxable year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the taxable year of relocation and the denominator of which is the number of days in such twelfth taxable year during which such eligible aggregate employment shares are maintained with respect to such premises.

(c) Except as provided in paragraph (d) of this subdivision, if the amount of the credit allowable under this subdivision for any taxable year exceeds the tax imposed for such year, the excess may be carried over, in order, to the five immediately succeeding taxable years and, to the extent not previously deductible, may be deducted from the taxpayer's tax for such years.

(d) The credits allowed under this subdivision, against the tax imposed by this chapter for the taxable year of the relocation and for the four taxable years immediately succeeding the taxable year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-677 of this chapter. For such taxable years, such credits or portions thereof may not be carried over to any succeeding taxable year.

(e) The credit allowable under this subdivision shall be deducted after the credits allowed by subdivisions seventeen and eighteen of this section, but prior to the deduction of any other credit allowed by this section.

(f) Notwithstanding any other provision of this subdivision to the contrary, in the case of a taxpayer that has obtained, pursuant to chapter six-C of title twenty-two of the code of the preceding municipality, a certification of eligibility and has received, in a taxable year beginning before January first, two thousand fifteen, the credit set forth in subdivision nineteen of section 11-604 of this chapter or section 11-643.9 of this chapter for the relocation of an eligible business, a credit shall be allowed under this subdivision to the taxpayer for any taxable year beginning on or after January first, two thousand fifteen in the same amount and to the same extent that a credit would have been allowed under subdivision nineteen of section 11-604 of this chapter or section 11-643.9 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.

20. Intentionally omitted.

21. Biotechnology credit. (a) (1) A taxpayer that is a qualified emerging technology company, engages in biotechnologies, and meets the eligibility requirements of this subdivision, shall be allowed a credit against the tax imposed by this subchapter. The amount of credit shall be equal to the sum of the amounts specified in subparagraphs three, four and five of this paragraph, subject to the limitations in subparagraphs six and seven of this paragraph, paragraph (b) of this subdivision, and paragraph three of subdivision (d) of section twelve hundred one-a of the tax law. For the purposes of this subdivision, "qualified emerging technology company" shall mean a company located in the city: (i) whose primary products or services are classified as emerging technologies and whose total annual product sales are ten million dollars or less; or

(ii) a company that has research and development activities in the city and whose ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified as determined by the National Science Foundation in the most recent published results from its Survey of Industry Research and Development, or any comparable successor survey as determined by the department of finance, and whose total annual product sales are ten million dollars or less. For the purposes of this subdivision, the definition of research and development funds shall be the same as that used by the National Science Foundation in the aforementioned survey. For the purposes of this subdivision, "biotechnologies" shall mean the technologies involving the scientific manipulation of living organisms, especially at the molecular and/or the sub-molecular genetic level, to produce products conducive to improving the lives and health of plants, animals, and humans; and the associated scientific research, pharmacological, mechanical, and computational applications and services connected with these

improvements. Activities included with such applications and services shall include, but not be limited to, alternative mRNA splicing, DNA sequence amplification, antigenetic switching bioaugmentation, bioenrichment, bioremediation, chromosome walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and sequencing, electroporation, gene translocation, genetic mapping, site-directed mutagenesis, bio-transduction, bio-mechanical and bio-electrical engineering, and bio-informatics.

(2) An eligible taxpayer shall (i) have no more than one hundred full-time employees, of which at least seventy-five percent are employed in the city, (ii) have a ratio of research and development funds to net sales, as referred to in section thirty-one hundred two-e of the public authorities law, which equals or exceeds six percent during the calendar year ending with or within the taxable year for which the credit is claimed, and (iii) have gross revenues, along with the gross revenues of its "affiliates" and "related members" not exceeding twenty million dollars for the calendar year immediately preceding the calendar year ending with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "affiliates" shall mean those corporations that are members of the same affiliated group, as defined in section fifteen hundred four of the internal revenue code, as the taxpayer. For the purposes of this subdivision, the term "related members" shall mean a person, corporation, or other entity, including an entity that is treated as a partnership or other pass-through vehicle for purposes of federal taxation, whether such person, corporation or entity is a taxpayer or not, where one such person, corporation or entity, or set of related persons, corporations or entities, directly or indirectly owns or controls a controlling interest in another entity. Such entity or entities may include all taxpayers under chapters five, eleven and seventeen of this title, and this subchapter and subchapters two and three of this chapter. A controlling interest shall mean, in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation; and in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

(3) An eligible taxpayer shall be allowed a credit for eighteen per centum of the cost or other basis for federal income tax purposes of research and development property that is acquired by the taxpayer by purchase as defined in subsection (d) of section one hundred seventy-nine of the internal revenue code and placed in service during the calendar year that ends with or within the taxable year for which the credit is claimed. Provided, however, for the purposes of this paragraph only, an eligible taxpayer shall be allowed a credit for such percentage of the (i) cost or other basis for federal income tax purposes for property used in the testing or inspection of materials and products, (ii) the costs or expenses associated with quality control of the research and development, (iii) fees for use of sophisticated technology facilities and processes, and (iv) fees for the production or eventual commercial distribution of materials and products resulting from the activities of an eligible taxpayer as long as such activities fall under activities relating to biotechnologies. The costs, expenses and other amounts for which a credit is allowed and claimed under this paragraph shall not be used in the calculation of any other credit allowed under

this subchapter. For the purposes of this subdivision, "research and development property" shall mean property that is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(4) An eligible taxpayer shall be allowed a credit for nine per centum of qualified research expenses paid or incurred by the taxpayer in the calendar year that ends with or within the taxable year for which the credit is claimed. For the purposes of this subdivision, "qualified research expenses" shall mean expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities; provided, however, that such costs shall not include advertising or promotion through media. In addition, costs associated with the preparation of patent applications, patent application filing fees, patent research fees, patent examinations fees, patent post allowance fees, patent maintenance fees, and grant application expenses and fees shall qualify as qualified research expenses. In no case shall the credit allowed under this subparagraph apply to expenses for litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

(5) An eligible taxpayer shall be allowed a credit for qualified high-technology training expenditures as described in this subparagraph paid or incurred by the taxpayer during the calendar year that ends with or within the taxable year for which the credit is claimed.

(i) The amount of credit shall be one hundred percent of the training expenses described in clause (iii) of this subparagraph, subject to a limitation of no more than four thousand dollars per employee per calendar year for such training expenses.

(ii) Qualified high-technology training shall include a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited, degree granting post-secondary college or university in the city that (A) directly relates to biotechnology activities, and (B) is intended to upgrade, retrain or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or micro-theoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses shall not include classes in the disciplines of management, accounting or the law or any class designed to fulfill the discipline specific requirements of a degree program at the associate, baccalaureate, graduate or professional level of these disciplines. Satisfactory completion of a course or courses shall mean the earning and granting of credit or equivalent unit, with the attainment of a grade of "B" or higher in a graduate level course or courses, a grade of "C" or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

(iii) Qualified high-technology training expenditures shall include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any affiliates of the taxpayer, that are paid or reimbursed by the taxpayer. Qualified

high-technology expenditures do not include room and board, computer hardware or software not specifically assigned for such course or courses, late-charges, fines or membership dues and similar expenses. Such qualified expenditures shall not be eligible for the credit provided by this section unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a qualified site during the period of such coursework and lasting through at least one hundred eighty days after the satisfactory completion of the qualifying course-work. Qualified high-technology training expenditures shall not include expenses for in-house or shared training outside of a city higher education institution or the use of consultants outside of credit granting courses, whether such consultants function inside of such higher education institution or not.

(iv) If a taxpayer relocates from an academic business incubator facility partnered with an accredited post-secondary education institution located within the city, which provides space and business support services to taxpayers, to another site, the credit provided in this subdivision shall be allowed for all expenditures referenced in clause (iii) of this subparagraph paid or incurred in the two preceding calendar years that the taxpayer was located in such an incubator facility for employees of the taxpayer who also relocate from said incubator facility to such city site and are employed and primarily located by the taxpayer in the city. Such expenditures in the two preceding years shall be added to the amounts otherwise qualifying for the credit provided by this subdivision that were paid or incurred in the calendar year that the taxpayer relocates from such a facility. Such expenditures shall include expenses paid for an eligible employee who is a full-time, full-year employee of said taxpayer during the calendar year that the taxpayer relocated from an incubator facility notwithstanding (A) that such employee was employed full or part-time as an officer, staff-person or paid intern of the taxpayer when such taxpayer was located at such incubator facility or (B) that such employee was not continuously employed when such taxpayer was located at the incubator facility during the one hundred eighty day period referred to in clause (iii) of this subparagraph, provided such employee received wages or equivalent income for at least seven hundred fifty hours during any twenty-four month period when the taxpayer was located at the incubator facility. Such expenditures shall include payments made to such employee after the taxpayer has relocated from the incubator facility for qualified expenditures if such payments are made to reimburse an employee for expenditures paid by the employee during such two preceding years. The credit provided under this paragraph shall be allowed in any taxable year that the taxpayer qualifies as an eligible taxpayer.

(v) For purposes of this subdivision the term "academic year" shall mean the annual period of sessions of a post-secondary college or university.

(vi) For the purposes of this subdivision the term "academic incubator facility" shall mean a facility providing low-cost space, technical assistance, support services and educational opportunities, including but not limited to central services provided by the manager of the facility to the tenants of the facility, to an entity located in the city. Such entity's primary activity must be in biotechnologies, and such entity must be in the formative stage of development. The academic incubator facility and the entity must act in partnership with an accredited post-secondary college or university located in the city. An

academic incubator facility's mission shall be to promote job creation, entrepreneurship, technology transfer, and provide support services to incubator tenants, including, but not limited to, business planning, management assistance, financial-packaging, linkages to financing services, and coordinating with other sources of assistance.

(6) An eligible taxpayer may claim credits under this subdivision for three consecutive years. In no case shall the credit allowed by this subdivision to a taxpayer exceed two hundred fifty thousand dollars per calendar year for eligible expenditures made during such calendar year.

(7) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in clause (iv) of subparagraph one of paragraph (e) of subdivision one of this section. Provided, however, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, that notwithstanding the provisions of section 11-679 of this chapter, no interest shall be paid thereon.

(8) The credit allowed under this subdivision shall only be allowed for taxable years beginning before January first, two thousand nineteen.

(b) (1) The percentage of the credit allowed to a taxpayer under this subdivision in any calendar year shall be:

(i) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is at least one hundred five percent of the taxpayer's base year employment, one hundred percent, except that in no case shall the credit allowed under this clause exceed two hundred fifty thousand dollars per calendar year. Provided, however, the increase in base year employment shall not apply to a taxpayer allowed a credit under this subdivision that was, (A) located outside of the city, (B) not doing business, or (C) did not have any employees, in the year preceding the first year that the credit is claimed. Any such taxpayer shall be eligible for one hundred percent of the credit for the first calendar year that ends with or within the taxable year for which the credit is claimed, provided that such taxpayer locates in the city, begins doing business in the city or hires employees in the city during such calendar year and is otherwise eligible for the credit pursuant to the provisions of this subdivision.

(ii) If the average number of individuals employed full time by a taxpayer in the city during the calendar year that ends with or within the taxable year for which the credit is claimed is less than one hundred five percent of the taxpayer's base year employment, fifty percent, except that in no case shall the credit allowed under this clause exceed one hundred twenty-five thousand dollars per calendar year. In the case of an entity located in the city receiving space and business support services by an academic incubator facility, if the average number of individuals employed full time by such entity in the city during the calendar year in which the credit allowed under this subdivision is claimed is less than one hundred five percent of the taxpayer's base year employment, the credit shall be zero.

(2) For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the city in the year preceding the first calendar year that ends with or within the taxable year for which the credit is claimed.

(3) For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during each calendar year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such calendar year or other applicable period.

(4) Notwithstanding anything contained in this section to the contrary, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year after reduction by all other credits permitted by this chapter.

(c) 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 twenty-one of section 11-604 of this chapter for an eligible acquisition of property and/or expense paid or incurred, a credit shall be allowed to the taxpayer under this subdivision for any tax year beginning on or after January first, two thousand fifteen in the same amount and to the same extent that a credit would have been allowed under subdivision twenty-one of section 11-604 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.

22. Beer production credit. (a) A taxpayer subject to tax under this subchapter, that is registered as a distributor under article eighteen of the tax law, and that produces sixty million or fewer gallons of beer in this state in the taxable year, shall be allowed a credit against the tax imposed by this subchapter in the amount specified in paragraph (b) of this subdivision. Provided, however, that no credit shall be allowed for any beer produced in excess of fifteen million five hundred thousand gallons in the taxable year. Notwithstanding anything in this title to the contrary, if a partnership is allowed a credit under subdivision (p) of section 11-503 of this title, a taxpayer that is a partner in such partnership shall not be allowed a credit under this subdivision for any taxable year that includes the last day of the taxable year for which the partnership is allowed such credit.

(b) The amount of the credit per taxpayer per taxable year for each gallon of beer produced in the city of New York on or after January first, two thousand seventeen shall be determined as follows:

(1) for the first five hundred thousand gallons of beer produced in the city of New York in the taxable year, the credit shall equal twelve cents per gallon; and

(2) for each gallon of beer produced in the city of New York in the taxable year in excess of five hundred thousand gallons, the credit shall equal three and eighty-six one-hundredths cents per gallon. In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year to less than the amount prescribed in subparagraph one of paragraph (e) of subdivision one of this section. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter; provided, however, that notwithstanding the provisions of section 11-679 of this chapter, no interest shall be paid thereon.

23. Credit for the provision of child care. In addition to any other credit allowed under this section, a taxpayer whose application for a credit authorized by section 11-144 of this title has been approved by

the department of finance shall be allowed a credit against the tax imposed by this chapter. The amount of the credit shall be determined as provided in such section. To the extent the amount of the credit allowed by this subdivision exceeds the amount of tax due pursuant to this subchapter, as calculated without such credit, such excess amount shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 11-677 of this chapter, provided, however, that notwithstanding the requirements of section 11-679 of this chapter to the contrary, no interest shall be paid thereon.

§ 11-654.1 Net operating loss. 1. In computing the business income subject to tax, taxpayers shall be allowed both a prior net operating loss conversion subtraction under subdivision two of this section and a net operating loss deduction under subdivision three of this section. The prior net operating loss conversion subtraction computed under subdivision two of this section shall be applied against business income before the net operating loss deduction computed under subdivision three of this section.

2. Prior net operating loss conversion subtraction. (a) Definitions. (1) "Base year" means the last taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen.

(2) "Unabsorbed net operating loss" means the unabsorbed portion of net operating loss as calculated under paragraph (f) of subdivision eight of section 11-602 of this chapter or subdivision (k-1) of section 11-641 of this chapter, as such sections were in effect on December thirty-first, two thousand fourteen, that was not deductible in previous taxable years and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such sections, including any net operating loss sustained by the taxpayer during the base year.

(3) "Base year BAP" means the taxpayer's business allocation percentage as calculated under paragraph (a) of subdivision three of section 11-604 of this chapter for the base year, or the taxpayer's allocation percentage as calculated under section 11-642 of this chapter for purposes of calculating entire net income for the base year, as such sections were in effect on December thirty-first, two thousand fourteen.

(4) "Base year tax rate" means the taxpayer's tax rate for the base year as applied to entire net income and calculated under subdivision one of section 11-604 of this chapter or subdivision (a) of section 11-643.5 of this chapter, as such provisions were in effect on December thirty-first, two thousand fourteen.

(b) The prior net operating loss conversion subtraction shall be calculated as follows:

(1) The taxpayer shall first calculate the tax value of its unabsorbed net operating loss for the base year. The value is equal to the product of (i) the amount of the taxpayer's unabsorbed net operating loss, (ii) the taxpayer's base year BAP, and (iii) the taxpayer's base year tax rate.

(2) The product determined under subparagraph one of this paragraph shall then be divided by eight and eighty-five one-hundredths per centum or, in the case of a financial corporation, as defined in clause (i) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter, the product determined under subparagraph one of this paragraph shall then be divided by nine per centum. This result

shall equal the taxpayer's prior net operating loss conversion subtraction pool.

(3) The taxpayer's prior net operating loss conversion subtraction for the taxable year shall equal one-tenth of its prior net operating loss conversion subtraction pool, plus any amount of unused prior net operating loss conversion subtraction from preceding taxable years.

(4) In lieu of the prior net operating loss conversion subtraction described in subparagraph three of this paragraph, if the taxpayer so elects, the taxpayer's prior net operating loss conversion subtraction for its taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand seventeen shall equal, in each year, not more than one-half of its prior net operating loss conversion subtraction pool until the pool is exhausted. If the pool is not exhausted at the end of such time period, the remainder of the pool shall be forfeited. The taxpayer shall make such election, which shall be revocable, on its first return for the tax year beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen by the due date for such return, determined with regard to extensions.

(c) (1) Where a taxpayer was properly included or required to be included in a combined report for the base year pursuant to section 11-605 of this chapter or a combined return for the base year pursuant to section 11-646 of this chapter, as such sections were in effect on December thirty-first, two thousand fourteen, and the members of the combined group for the base year are the same as the members of the combined group for the taxable year immediately succeeding the base year, the combined group shall calculate its prior net operating loss conversion subtraction pool using the combined group's total unabsorbed net operating loss, base year BAP, and base year tax rate.

(2) If a combined group includes additional members in the taxable year immediately succeeding the base year that were not included in the combined group during the base year, each base year combined group and each taxpayer that filed separately for the base year but is included in the combined group in the taxable year succeeding the base year shall calculate its prior net operating loss conversion subtraction pool, and the sum of the pools shall be the combined prior net operating loss conversion subtraction pool of the combined group.

(3) If a taxpayer was properly included in a combined report for the base year and files a separate report for a subsequent taxable year, then the amount of remaining prior net operating loss conversion subtraction allowed to the taxpayer filing such separate report shall be proportionate to the amount that such taxpayer contributed to the prior net operating loss conversion subtraction pool on a combined basis, and the remaining prior net operating loss conversion subtraction allowed to the remaining members of the combined group shall be reduced accordingly.

(4) If a taxpayer filed a separate report for the base year and is properly included in a combined report for a subsequent taxable year, then the prior net operating loss conversion subtraction pool of the combined group shall be increased by the amount of the remaining prior net operating loss conversion subtraction allowed to the taxpayer at the time the taxpayer is properly included in the combined group.

(d) The prior net operating loss conversion subtraction may be used to reduce the taxpayer's tax on allocated business income to the higher of the tax on business capital under clause (ii) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter or

the fixed dollar minimum under clause (iv) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter. Unless the taxpayer has made the election provided for in subparagraph four of paragraph (b) of this subdivision, any amount of unused prior net operating loss conversion subtraction shall be carried forward to a subsequent tax year or subsequent tax years until the prior net operating loss conversion subtraction pool is exhausted, but for no longer than twenty taxable years or the taxable year beginning on or after January first, two thousand thirty-five but before January first, two thousand thirty-six, whichever comes first. Such amount carried forward shall not be subject to the one-tenth limitation for the subsequent tax year or years under subparagraph three of paragraph (b) of this subdivision. However, if the taxpayer elects to compute its prior net operating loss conversion subtraction pursuant to subparagraph four of paragraph (b) of this subdivision, the taxpayer shall not carry forward any unused amount of such prior net operating loss conversion subtraction to any tax year beginning on or after January first, two thousand seventeen.

3. In computing business income, a net operating loss deduction shall be allowed. A net operating loss deduction shall be the amount of net operating loss or losses from one or more taxable years that are carried forward or carried back to a particular taxable year. A net operating loss shall be the amount of a business loss incurred in a particular tax year multiplied by the business allocation percentage for that year as determined under subdivision three of section 11-654 of this subchapter. The maximum net operating loss deduction that is allowed in a taxable year shall be the amount that reduces the taxpayer's tax on allocated business income to the higher of the tax on business capital under clause (ii) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter or the fixed dollar minimum amount under clause (iv) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter. Such net operating loss deduction and net operating loss shall be determined in accordance with the following:

(a) Such net operating loss deduction shall not be limited to the amount allowed under section one hundred seventy-two of the internal revenue code or the amount that would have been allowed if the taxpayer did not have an election under subchapter S of chapter one of the internal revenue code in effect for the applicable tax year.

(b) Such net operating loss deduction shall not include any net operating loss incurred during any taxable year beginning prior to January first, two thousand fifteen, or during any taxable year in which the taxpayer was not subject to the tax imposed by this subchapter.

(c) A taxpayer that files as part of a federal consolidated return but on a separate basis for purposes of this subchapter shall compute its deduction and loss as if it were filing on a separate basis for federal income tax purposes.

(d) A net operating loss may be carried back three taxable years preceding the taxable year of the loss except that no loss may be carried back to a taxable year beginning before January first, two thousand fifteen. The loss first shall be carried to the earliest of the three taxable years preceding the taxable year of the loss. If it is not entirely used in that year, it shall be carried to the second taxable year preceding the taxable year of the loss, and any remaining amount shall be carried to the taxable year immediately preceding the taxable year of the loss. Any unused amount of loss then remaining may be

carried forward for as many as twenty taxable years following the taxable year of the loss. Losses carried forward are carried forward first to the taxable year immediately following the taxable year of the loss, then to the second taxable year following the taxable year of the loss, and then to the next immediately subsequent taxable year or years until the loss is used up or the twentieth taxable year following the taxable year of the loss, whichever comes first.

(e) Such net operating loss deduction shall not include any net operating loss incurred during any taxable year commencing after January first, two thousand fifteen if the taxpayer was subject to tax under subchapter two or three of this chapter in that year; provided, however, any year commencing after January first, two thousand fifteen that the taxpayer was subject to tax under subchapter two or three of this chapter in that year must be treated as a taxable year for purposes of determining the number of taxable years to which a net operating loss may be carried forward.

(f) Where there are two or more allocated net operating losses, or portions thereof, carried back or carried forward to be deducted in one particular tax year from allocated business income, the earliest allocated loss incurred must be applied first.

(g) A taxpayer may elect to waive the entire carryback period with respect to a net operating loss. Such election must be made on the taxpayer's original timely filed return, determined with regard to extensions, for the taxable year of the net operating loss for which the election is to be in effect. Once an election is made for a taxable year, it shall be irrevocable for that taxable year. A separate election must be made for each taxable year of the loss. This election applies to all members of a combined group.

§ 11-654.2 Receipts allocation. 1. The percentage of receipts of the taxpayer to be allocated to the city for purposes of subparagraph two of paragraph (a) of subdivision three of section 11-654 of this subchapter shall be equal to the receipts fraction determined pursuant to this section. The receipts fraction is a fraction, determined by including only those receipts, net income, net gains, and other items described in this section that are included in the computation of the taxpayer's business income, determined without regard to the modification provided in subparagraph fourteen of paragraph (a) of subdivision eight of section 11-652 of this subchapter, for the taxable year. The numerator of the receipts fraction shall be equal to the sum of all the amounts required to be included in the numerator pursuant to the provisions of this section and the denominator of the receipts fraction shall be equal to the sum of all the amounts required to be included in the denominator pursuant to the provisions of this section.

2. (a) Receipts from sales of tangible personal property where shipments are made to points within the city or the destination of the property is a point within the city shall be included in the numerator of the receipts fraction. Receipts from sales of tangible personal property where shipments are made to points within and without the city or the destination is within and without the city shall be included in the denominator of the receipts fraction.

(b) Receipts from sales of electricity delivered to points within the city shall be included in the numerator of the receipts fraction. Receipts from sales of electricity delivered to points within and without the city shall be included in the denominator of the receipts fraction.

(c) Receipts from sales of tangible personal property and electricity that are traded as commodities as the term "commodity" is defined in section four hundred seventy-five of the internal revenue code, shall be included in the receipts fraction in accordance with clause (ix) of subparagraph two of paragraph (a) of subdivision five of this section.

(d) Net gains, not less than zero, from the sales of real property located within the city shall be included in the numerator of the receipts fraction. Net gains, not less than zero, from the sales of real property located within and without the city shall be included in the denominator of the receipts fraction.

3. (a) Receipts from rentals of real and tangible personal property located within the city shall be included in the numerator of the receipts fraction. Receipts from rentals of real and tangible personal property located within and without the city shall be included in the denominator of the receipts fraction.

(b) Receipts of royalties from the use of patents, copyrights, trademarks, and similar intangible personal property within the city shall be included in the numerator of the receipts fraction. Receipts of royalties from the use of patents, copyrights, trademarks, and similar intangible personal property within and without the city shall be included in the denominator of the receipts fraction. A patent, copyright, trademark, or similar intangible personal property is used within the city to the extent that the activities thereunder are carried on within the city.

(c) Receipts from the sales of rights for closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within the city as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, shall be included in the numerator of the receipts fraction to the extent that such receipts are attributable to such transmissions received or exhibited within the city. Receipts from all sales of rights for closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, shall be included in the denominator of the receipts fraction.

4. (a) For purposes of determining the receipts fraction under this section, the term "digital product" means any property or service, or combination thereof, of whatever nature delivered to the purchaser through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof. Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, book or literary work, graphic work, game, information or entertainment service, storage of digital products and computer software by whatever means delivered. The term "delivered to" includes furnished or provided to or accessed by. A digital product shall not include legal, medical, accounting, architectural, research, analytical, engineering or consulting services provided by the taxpayer.

(b) Receipts from the sale of, license to use, or granting of remote access to digital products within the city, determined according to the hierarchy of methods set forth in subparagraphs one through four of paragraph (c) of this subdivision, shall be included in the numerator of the receipts fraction. Receipts from the sale of, license to use, or granting of remote access to digital products within and without the city shall be included in the denominator of the receipts fraction. The taxpayer must exercise due diligence under each method described in paragraph (c) of this subdivision before rejecting it and proceeding to

the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry. If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and shall be considered to be one receipt regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated by this hierarchy.

(c) The hierarchy of sourcing methods is as follows: (1) the customer's primary use location of the digital product; (2) the location where the digital product is received by the customer, or is received by a person designated for receipt by the customer; (3) the receipts fraction determined pursuant to this subdivision for the preceding taxable year for such digital product; or (4) the receipts fraction in the current taxable year for those digital products that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

5. (a) A financial instrument is a "nonqualified financial instrument" if it is not a qualified financial instrument. A qualified financial instrument means a financial instrument that is of a type described in any of clauses (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this paragraph and that has been marked to market in the taxable year by the taxpayer under section four hundred seventy-five or section one thousand two hundred fifty-six of the internal revenue code. Further, if the taxpayer has in the taxable year marked to market a financial instrument of the type described in any of clauses (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this paragraph, then any financial instrument within that type described in the above specified clause or clauses that has not been marked to market by the taxpayer under section four hundred seventy-five or section one thousand two hundred fifty-six of the internal revenue code is a qualified financial instrument in the taxable year, provided, however, (i) a loan secured by real property shall not be a qualified financial instrument, (ii) if the only loans that are marked to market by the taxpayer under section four hundred seventy-five or section one thousand two hundred fifty-six of the internal revenue code are loans secured by real property, then no loans shall be qualified financial instruments, (iii) stock that is investment capital as defined in paragraph (a) of subdivision four of section 11-652 of this subchapter shall not be a qualified financial instrument, and (iv) stock that generates other exempt income as defined in subdivision five-a of section 11-652 of this subchapter and that is not marked to market under section four hundred seventy-five or section one thousand two hundred fifty-six of the internal revenue code shall not constitute a qualified financial instrument with respect to the income from that stock that is described in such subdivision five-a. If a corporation is included in a combined report, the definition of qualified financial instrument shall be determined on a combined basis. In the case of RIC or a REIT that is not a captive RIC or a captive REIT, a qualified financial instrument means a financial instrument that is of a type described in any of clauses (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this paragraph, other than (i) a loan secured by real property, (ii) stock that is investment capital as defined in paragraph (a) of subdivision four of section 11-652 of this subchapter, and (iii) stock that generates other exempt income as defined in subdivision five-a of section 11-652 of this subchapter with respect to the income from that stock that is described in such subdivision five-a.

(1) In determining the inclusion of receipts and net gains from qualified financial instruments in the receipts fraction, taxpayers may elect to use the fixed percentage method described in this subparagraph for qualified financial instruments. The election is irrevocable, applies to all qualified financial instruments, and must be made on an annual basis on the taxpayer's original, timely filed return, determined with regard to extensions. If the taxpayer elects the fixed percentage method, then all income, gain or loss, including marked to market net gains as defined in clause (x) of subparagraph two of this paragraph, from qualified financial instruments constitute business income, gain or loss. If the taxpayer does not elect to use the fixed percentage method, then receipts and net gains are included in the receipts fraction in accordance with the customer sourcing method described in subparagraph two of this paragraph. Under the fixed percentage method, eight percent of all net income, not less than zero, from qualified financial instruments shall be included in the numerator of the receipts fraction. All net income, not less than zero, from qualified financial instruments shall be included in the denominator of the receipts fraction.

(2) Receipts and net gains from qualified financial instruments, in cases where the taxpayer did not elect to use the fixed percentage method described in subparagraph one of this paragraph, and from nonqualified financial instruments shall be included in the receipts fraction in accordance with this subparagraph. For purposes of this paragraph, an individual is deemed to be located within the city if his or her billing address is within the city. A business entity is deemed to be located within the city if its commercial domicile is located within the city.

(i)(A) Receipts constituting interest from loans secured by real property located within the city shall be included in the numerator of the receipts fraction. Receipts constituting interest from loans secured by real property located within and without the city shall be included in the denominator of the receipts fraction.

(B) Receipts constituting interest from loans not secured by real property shall be included in the numerator of the receipts fraction if the borrower is located within the city. Receipts constituting interest from loans not secured by real property, whether the borrower is located within or without the city, shall be included in the denominator of the receipts fraction.

(C) Net gains, not less than zero, from sales of loans secured by real property shall be included in the numerator of the receipts fraction as provided in this subclause. The amount of net gains from the sales of loans secured by real property included in the numerator of the receipts fraction shall be determined by multiplying the net gains by a fraction, the numerator of which shall be the amount of gross proceeds from sales of loans secured by real property located within the city and the denominator of which shall be the gross proceeds from sales of loans secured by real property located within and without the city. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains, not less than zero, from sales of loans secured by real property located within and without the city shall be included in the denominator of the receipts fraction.

(D) Net gains, not less than zero, from sales of loans not secured by real property shall be included in the numerator of the receipts fraction as provided in this subclause. The amount of net gains from the sales of loans not secured by real property included in the numerator of the receipts fraction shall be determined by multiplying the net gains

by a fraction, the numerator of which shall be the amount of gross proceeds from sales of loans not secured by real property to purchasers located within the city and the denominator of which shall be the amount of gross proceeds from sales of loans not secured by real property to purchasers located within and without the city. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains, not less than zero, from sales of loans not secured by real property shall be included in the denominator of the receipts fraction.

(E) For purposes of this subdivision, a loan is secured by real property if fifty percent or more of the value of the collateral used to secure the loan, when valued at fair market value as of the time the loan was entered into, consists of real property.

(ii) Federal, state, and municipal debt. Receipts constituting interest and net gains from sales of debt instruments issued by the United States, any state, or political subdivision of a state shall not be included in the numerator of the receipts fraction. Receipts constituting interest and net gains, not less than zero, from sales of debt instruments issued by the United States and the state of New York or its political subdivisions, including the city, shall be included in the denominator of the receipts fraction. Fifty percent of the receipts constituting interest and net gains, not less than zero, from sales of debt instruments issued by other states or their political subdivisions shall be included in the denominator of the receipts fraction.

(iii) Asset backed securities and other government agency debt. Eight percent of the interest income from asset backed securities or other securities issued by government agencies, including but not limited to securities issued by the government national mortgage association (GNMA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC), or the small business administration, or eight percent of the interest income from asset backed securities issued by other entities shall be included in the numerator of the receipts fraction. Eight percent of the net gains, not less than zero, from (A) sales of asset backed securities or other securities issued by government agencies, including but not limited to securities issued by GNMA, FNMA, FHLMC, or the small business administration, or (B) sales of other asset backed securities that are sold through a registered securities broker or dealer or through a licensed exchange, shall be included in the numerator of the receipts fraction. The amount of net gains, not less than zero, from sales of other asset backed securities not referenced in subclause (A) or (B) of this clause included in the numerator of the receipts fraction shall be determined by multiplying such net gains by a fraction, the numerator of which shall be the amount of gross proceeds from such sales to purchasers located in the city and the denominator of which shall be the amount of gross proceeds from such sales to purchasers located within and without the city. Receipts constituting interest income from asset backed securities and other securities referenced in this clause and net gains, not less than zero, from sales of asset backed securities and other securities referenced in this clause shall be included in the denominator of the receipts fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the securities but shall not be less than zero.

(iv) Receipts constituting interest from corporate bonds shall be included in the numerator of the receipts fraction if the commercial domicile of the issuing corporation is within the city. Eight percent of

the net gains, not less than zero, from sales of corporate bonds sold through a registered securities broker or dealer or through a licensed exchange shall be included in the numerator of the receipts fraction. The amount of net gains, not less than zero, from other sales of corporate bonds included in the numerator of the receipts fraction shall be determined by multiplying such net gains by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located within the city and the denominator of which is the amount of gross proceeds from sales to purchasers located within and without the city. Receipts constituting interest from corporate bonds, whether the issuing corporation's commercial domicile is within or without the city, and net gains, not less than zero, from sales of corporate bonds to purchasers within and without the city shall be included in the denominator of the receipts fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the bonds but shall not be less than zero.

(v) Eight percent of net interest income, not less than zero, from reverse repurchase agreements and securities borrowing agreements shall be included in the numerator of the receipts fraction. Net interest income, not less than zero, from reverse repurchase agreements and securities borrowing agreements shall be included in the denominator of the receipts fraction. Net interest income from reverse repurchase agreements and securities borrowing agreements shall be determined for purposes of this subdivision after the deduction of the interest expense from the taxpayer's repurchase agreements and securities lending agreements but shall not be less than zero. For this calculation, the amount of such interest expense shall be the interest expense associated with the sum of the value of the taxpayer's repurchase agreements where it is the seller/borrower plus the value of the taxpayer's securities lending agreements where it is the securities lender, provided such sum is limited to the sum of the value of the taxpayer's reverse repurchase agreements where it is the purchaser/lender plus the value of the taxpayer's securities lending agreements where it is the securities borrower.

(vi) Eight percent of the net interest, not less than zero, from federal funds shall be included in the numerator of the receipts fraction. The net interest, not less than zero, from federal funds shall be included in the denominator of the receipts fraction. Net interest from federal funds shall be determined after deduction of interest expense from federal funds.

(vii) Dividends from stock, net gains, not less than zero, from sales of stock and net gains, not less than zero, from sales of partnership interests shall not be included in either the numerator or denominator of the receipts fraction unless the commissioner of finance determines pursuant to subdivision eleven of this section that inclusion of such dividends and net gains, not less than zero, is necessary to properly reflect the business income or capital of the taxpayer.

(viii)(A) Receipts constituting interest from other financial instruments shall be included in the numerator of the receipts fraction if the payor is located within the city. Receipts constituting interest from other financial instruments, whether the payor is within or without the city, shall be included in the denominator of the receipts fraction.

(B) Net gains, not less than zero, from sales of other financial instruments and other income, not less than zero, from other financial instruments where the purchaser or payor is located within the city shall be included in the numerator of the receipts fraction, provided

that, if the purchaser or payor is a registered securities broker or dealer or the transaction is made through a licensed exchange, then eight percent of the net gains, not less than zero, or other income, not less than zero, shall be included in the numerator of the receipts fraction. Net gains, not less than zero, from sales of other financial instruments and other income, not less than zero, from other financial instruments shall be included in the denominator of the receipts fraction.

(ix) Net income, not less than zero, from sales of physical commodities shall be included in the numerator of the receipts fraction as provided in this clause. The amount of net income from sales of physical commodities included in the numerator of the receipts fraction shall be determined by multiplying the net income from sales of physical commodities by a fraction, the numerator of which shall be the amount of receipts from sales of physical commodities actually delivered to points within the city or, if there is no actual delivery of the physical commodity, sold to purchasers located within the city, and the denominator of which shall be the amount of receipts from sales of physical commodities actually delivered to points within and without the city or, if there is no actual delivery of the physical commodity, sold to purchasers located within and without the city. Net income, not less than zero, from sales of physical commodities shall be included in the denominator of the receipts fraction. Net income, not less than zero, from sales of physical commodities shall be determined after the deduction of the cost to acquire or produce the physical commodities.

(x)(A) For purposes of this subdivision, "marked to market" means that a financial instrument is, under section four hundred seventy-five or section twelve hundred fifty-six of the internal revenue code, treated by the taxpayer as sold for its fair market value on the last business day of the taxpayer's taxable year. "Marked to market gain or loss" means the gain or loss recognized by the taxpayer under section four hundred seventy-five or section twelve hundred fifty-six of the internal revenue code because the financial instrument is treated as sold for its fair market value on the last business day of the taxpayer's taxable year.

(B) The amount of marked to market net gains, not less than zero, from each type of financial instrument that is marked to market included in the numerator of the receipts fraction shall be determined by multiplying the marked to market net gains, not less than zero, from such type of financial instrument by a fraction, the numerator of which shall be the numerator of the receipts fraction for net gains from that type of financial instrument determined under the applicable clause of this subparagraph and the denominator of which shall be the denominator of the receipts fraction for net gains from that type of financial instrument determined under the applicable clause of this subparagraph. Marked to market net gains, not less than zero, from financial instruments for which the numerator of the receipts fraction for net gains is determined under this subparagraph shall be included in the denominator of the receipts fraction.

(C) If the type of financial instrument that is marked to market is not otherwise sourced by the taxpayer under this subparagraph, or if the taxpayer has a net loss from the sales of that type of financial instrument under the applicable clause of this subparagraph, the amount of marked to market net gains, not less than zero, from that type of financial instrument included in the numerator of the receipts fraction shall be determined by multiplying the marked to market net gains, but not

less than zero, from that type of financial instrument by a fraction, the numerator of which shall be the sum of the amount of receipts included in the numerator of the receipts fraction under clauses (i) through (ix) of this subparagraph and subclause (B) of this clause, and the denominator of which shall be the sum of the amount of receipts included in the denominator of the receipts fraction under clauses (i) through (ix) of this subparagraph and subclause (B) of this clause. Marked to market net gains, not less than zero, for which the amount to be included in the numerator of the receipts fraction is determined under this subparagraph shall be included in the denominator of the receipts fraction.

(b) Receipts of a registered securities broker or dealer from securities or commodities broker or dealer activities described in this paragraph shall be deemed to be generated within the city as described in subparagraphs one through eight of this paragraph. Receipts from such activities generated within the city shall be included in the numerator of the receipts fraction. Receipts from such activities generated within and without the city shall be included in the denominator of the receipts fraction. For the purposes of this paragraph, the term "securities" shall have the same meaning as in paragraph two of subsection (c) of section four hundred seventy-five of the internal revenue code and the term "commodities" shall have the same meaning as in paragraph two of subsection (e) of section four hundred seventy-five of the internal revenue code.

(1) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to be generated within the city if the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions is within the city.

(2) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to be generated within the city if the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest is within the city.

(3) (i) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer, such customer being the entity that is contemplating issuing or is issuing securities, or fees earned by the taxpayer for managing an underwriting shall be deemed to be generated within the city if the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees is within the city.

(ii) Receipts constituting the primary spread of selling concession from underwritten securities shall be deemed to be generated within the city if the customer is located within the city.

(iii) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(4) Receipts constituting account maintenance fees shall be deemed to be generated within the city if the mailing address in the records of

the taxpayer of the customer who is responsible for paying such account maintenance fees is within the city.

(5) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, but excluding fees paid for services described in paragraph (d) of this subdivision, shall be deemed to be generated within the city if the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees is within the city.

(6) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to a corporation affiliated with the taxpayer but with which the taxpayer is not permitted or required to file a combined report pursuant to section 11-654.3 of this subchapter shall be deemed to arise from services performed at the principal place of business of such affiliated corporation.

(7) If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to be generated within the city to the extent set forth in each of such subparagraphs. The amount of such receipts shall exclude the amount the taxpayer is required to pay to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to be generated within the city to the extent set forth in each of such subparagraphs.

(8) If, for the purposes of subparagraph one, subparagraph two, clause (i) of subparagraph three, subparagraph four, or subparagraph five of this paragraph, the taxpayer is unable from its records to determine the mailing address of the customer, eight percent of the receipts shall be included in the numerator of the receipts fraction.

(c) Receipts relating to the bank, credit, travel, and entertainment card activities described in this paragraph shall be deemed to be generated within the city as described in subparagraphs one through four of this paragraph. Receipts from such activities generated within the city shall be included in the numerator of the receipts fraction. Receipts from such activities generated within and without the city shall be included in the denominator of the receipts fraction.

(1) Receipts constituting interest, and fees and penalties in the nature of interest, from bank, credit, travel and entertainment card receivables shall be deemed to be generated within the city if the mailing address of the card holder in the records of the taxpayer is within the city;

(2) Receipts from service charges and fees from such cards shall be deemed to be generated within the city if the mailing address of the card holder in the records of the taxpayer is within the city;

(3) Receipts from merchant discounts shall be deemed to be generated within the city if the merchant is located within the city. In the case of a merchant with locations both within and without the city, only receipts from merchant discounts attributable to sales made from locations within the city are allocated to the city. It shall be presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant to the taxpayer; and

(4) Receipts from credit card authorization processing, and clearing and settlement processing received by a credit card processor shall be deemed to be generated within the city if the location where the credit card processor's customer accesses the credit card processor's network is located within the city. The amount of all other receipts received by a credit card processor not specifically addressed in subdivisions one through nine or subdivision twelve of this section deemed to be generated within the city shall be determined by multiplying the total amount of such other receipts by the average of (i) eight percent and (ii) the percent of Staten Island access points. The percent of Staten Island access points shall be the number of locations in Staten Island from which the credit card processor's customers access the credit card processor's network divided by the total number of locations in the United States where the credit card processor's customers access the credit card processor's network.

(d) Receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company shall be included in the denominator of the receipts fraction. The portion of such receipts included in the numerator of the receipts fraction, such portion referred to herein as the Staten Island portion, shall be determined as provided in this paragraph.

(1) The Staten Island portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction shall be the sum of the monthly percentages, as defined hereinafter, determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer, but excluding any month during which the investment company had no outstanding shares. The monthly percentage for each such month shall be determined by dividing the number of shares in the investment company that are owned on the last day of the month by shareholders that are located in the city by the total number of shares in the investment company outstanding on that date. The denominator of the fraction shall be the number of such monthly percentages.

(2)(i) For purposes of this paragraph, an individual, estate or trust shall be deemed to be located within the city if his, her or its mailing address in the records of the investment company is located within the city. A business entity is deemed to be located within the city if its commercial domicile is located within the city.

(ii) For purposes of this paragraph, the term "investment company" means a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, and a partnership to which subsection (a) of section seven thousand seven hundred four of the internal revenue code applies, by virtue of paragraph three of subsection (c) of section seven thousand seven hundred four of such code, and that meets the requirements of subsection (b) of section eight hundred fifty-one of such code. The provisions of this subparagraph shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(iii) For purposes of this paragraph, the term "receipts received from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company, in their capacity as such.

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

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

(v) For purposes of this paragraph, the term "distribution services" means the services of advertising, servicing investor accounts, including redemptions, marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts, including redemptions, or marketing shares, only where such service is performed by a person who is, or was, in the case of a closed end company, also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to subsection (b) of section fifteen of the federal investment company act of nineteen hundred forty, as amended.

(vi) For purposes of this paragraph, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined in subparagraph (v) of this paragraph, to such investment company.

(e) For purposes of this subdivision, a taxpayer shall use the following hierarchy to determine the commercial domicile of a business entity, based on the information known to the taxpayer or information that would be known upon reasonable inquiry: (1) the seat of management and control of the business entity; and (2) the billing address of the business entity in the taxpayer's records. The taxpayer must exercise due diligence before rejecting the first method in this hierarchy and proceeding to the next method.

(f) For purposes of this subdivision, the term "registered securities broker or dealer" means a broker or dealer registered as such by the securities and exchange commission or a broker or dealer registered as such by the commodities futures trading commission, and shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at title 17, part 240, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

5-a. Notwithstanding any other provision of this section, net global intangible low-taxed income shall be included in the receipts fraction as provided in this subdivision. Receipts constituting net global intangible low-taxed income shall not be included in the numerator of the receipts fraction. Receipts constituting net global intangible low-taxed income shall be included in the denominator of the receipts fraction. For purposes of this subdivision, the term "net global intangible low-taxed income" means the amount required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section nine hundred fifty-one-D of the internal revenue code less the amount of the deduction allowed under clause (i) of subparagraph (B) of paragraph one of subdivision (a) of section two hundred fifty of such code.

6. Receipts from the conduct of a railroad business, including surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car or sleeping car business, or a trucking business shall be included in the numerator of the receipts fraction as follows.

The amount of receipts from the conduct of a railroad business or a trucking business included in the numerator of the receipts fraction shall be determined by multiplying the amount of receipts from such business by a fraction, the numerator of which shall be the miles in such business within the city during the period covered by the taxpayer's report and the denominator of which shall be the miles in such business within and without the city during such period. Receipts from the conduct of the railroad business or a trucking business shall be included in the denominator of the receipts fraction.

7. (a) Receipts of a taxpayer acting as principal from the activity of air freight forwarding and like indirect air carrier receipts arising from such activity shall be included in the numerator of the receipts fraction as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made within the city and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made within this city. Such receipts, whether the pickup or delivery associated with the receipts is within or without the city, shall be included in the denominator of the receipts fraction.

(b)(1)(i) The portion of receipts of a taxpayer from aviation services, other than services described in paragraph (a) of this subdivision, but including the receipts of a qualified air freight forwarder, to be included in the numerator of the receipts fraction shall be determined by multiplying its receipts from such aviation services by a percentage which is equal to the arithmetic average of the following three percentages:

(A) the percentage determined by dividing the aircraft arrivals and departures within the city by the taxpayer during the period covered by its report by the total aircraft arrivals and departures within and without the city during such period; provided, however, arrivals and departures solely for maintenance or repair, refueling, where no debarkation or embarkation of traffic occurs, arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner of finance may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster, other than on a scheduled flight; provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above, without regard to remuneration, shall be included in computing such arrival and departure percentage;

(B) the percentage determined by dividing the revenue tons handled by the taxpayer at airports within the city during such period by the total revenue tons handled by it at airports within and without the city during such period; and

(C) the percentage determined by dividing the taxpayer's originating revenue within the city for such period by its total originating revenue within and without the city for such period.

(ii) As used herein the term "aircraft arrivals and departures" means the number of landings and takeoffs of the aircraft of the taxpayer and the number of air pickups and deliveries by the aircraft of such taxpayer; the term "originating revenue" means revenue to the taxpayer from

the transportation of revenue passengers and revenue property first received by the taxpayer either as originating or connecting traffic at airports; and the term "revenue tons handled by the taxpayer at airports" means the weight in tons of revenue passengers, at two hundred pounds per passenger, and revenue cargo first received either as originating or connecting traffic or finally discharged by the taxpayer at airports.

(2) All such receipts of a taxpayer from aviation services described in this paragraph shall be included in the denominator of the receipts fraction.

(3) A corporation is a qualified air freight forwarder with respect to another corporation:

(i) if it owns or controls either directly or indirectly all of the capital stock of such other corporation, or if all of its capital stock is owned or controlled either directly or indirectly by such other corporation, or if all of the capital stock of both corporations is owned or controlled either directly or indirectly by the same interests;

(ii) if it is principally engaged in the business of air freight forwarding; and

(iii) if its air freight forwarding business is carried on principally with the airline or airlines operated by such other corporation.

8. (a) The amount of receipts from sales of advertising in newspapers or periodicals included in the numerator of the receipts fraction shall be determined by multiplying the total of such receipts by a fraction, the numerator of which shall be the number of newspapers and periodicals delivered to points within the city and the denominator of which shall be the number of newspapers and periodicals delivered to points within and without the city. The total of such receipts from sales of advertising in newspapers or periodicals shall be included in the denominator of the receipts fraction.

(b) The amount of receipts from sales of advertising on television or radio included in the numerator of the receipts fraction shall be determined by multiplying the total of such receipts by a fraction, the numerator of which shall be the number of viewers or listeners within the city and the denominator of which shall be the number of viewers or listeners within and without the city. The total of such receipts from sales of advertising on television or radio shall be included in the denominator of the receipts fraction.

(c) The amount of receipts from sales of advertising not described in paragraph (a) or (b) of this subdivision that is furnished, provided or delivered to, or accessed by the viewer or listener through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media or any combination thereof, included in the numerator of the receipts fraction shall be determined by multiplying the total of such receipts by a fraction, the numerator of which shall be the number of viewers or listeners within the city and the denominator of which shall be the number of viewers or listeners within and without the city. The total of such receipts from sales of advertising described in this paragraph shall be included in the denominator of the receipts fraction.

9. Receipts from the transportation or transmission of gas through pipes shall be included in the numerator of the receipts fraction as follows. The amount of receipts from the transportation or transmission of gas through pipes included in the numerator of the receipts fraction shall be determined by multiplying the total amount of such receipts by a fraction, the numerator of which shall be the taxpayer's transporta-

tion units within the city and the denominator of which shall be the taxpayer's transportation units within and without the city. A transportation unit is the transportation of one cubic foot of gas over a distance of one mile. The total amount of receipts from the transportation or transmission of gas through pipes shall be included in the denominator of the receipts fraction.

10. (a) Receipts from services not addressed in subdivisions one through nine or subdivision twelve of this section and other business receipts not addressed in such subdivisions shall be included in the numerator of the receipts fraction if the location of the customer is within the city. Such receipts from customers within and without the city shall be included in the denominator of the receipts fraction. Whether the receipts are included in the numerator of the receipts fraction shall be determined according to the hierarchy of methods set forth in paragraph (b) of this subdivision. The taxpayer must exercise due diligence under each method described in such paragraph before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry.

(b) The hierarchy of methods is as follows: (1) the benefit is received in the city; (2) delivery destination; (3) the receipts fraction for such receipts within the city determined pursuant to this subdivision for the preceding taxable year; or (4) the receipts fraction in the current taxable year determined pursuant to this subdivision for those receipts that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

11. If it shall appear that the receipts fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the city, the commissioner of finance is authorized in his or her discretion to adjust it, or the taxpayer may request that the commissioner of finance adjust it, by (a) excluding one or more items in such determination, (b) including one or more other items in such determination, or (c) any other similar or different method calculated to effect a fair and proper allocation of the business income and capital reasonably attributed to the city. The party seeking the adjustment shall bear the burden of proof to demonstrate that the receipts fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the city and that the proposed adjustment is appropriate.

12. Receipts from the operation of vessels shall be included in the numerator of the receipts fraction as follows. The amount of receipts from the operation of vessels included in the numerator of the receipts fraction shall be determined by multiplying the amount of such receipts by a fraction, the numerator of which shall be the aggregate number of working days of the vessels owned or leased by the taxpayer in territorial waters of the city during the period covered by the taxpayer's report and the denominator of which shall be the aggregate number of working days of all vessels owned or leased by the taxpayer during such period. Receipts from the operation of vessels shall be included in the denominator of the receipts fraction.

§ 11-654.3 Combined reports. 1. (a) The tax on a combined report shall be the highest of (1) the combined business income multiplied by the tax rate specified in clause (i) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter; (2) the combined capital multiplied by the tax rate specified in clause (ii) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this

subchapter, but not exceeding the limitation provided for in such clause (ii); or (3) the fixed dollar minimum that is attributable to the designated agent of the combined group. In addition, the tax on a combined report shall include the fixed dollar minimum tax specified in clause (iv) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter for each member of the combined group, other than the designated agent, that is a taxpayer.

(b) The combined business income base is the amount of the combined business income of the combined group that is allocated to the city, reduced by any prior net operating loss conversion subtraction and any net operating loss deduction for the combined group. The combined capital base is the amount of the combined capital of the combined group that is allocated to the city.

2. (a) Except as provided in paragraph (c) of this subdivision, any taxpayer (1) which owns or controls either directly or indirectly more than fifty percent of the voting power of the capital stock of one or more other corporations, or (2) more than fifty percent of the voting power of the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations, or (3) more than fifty percent of the voting power of the capital stock of which and the capital stock of one or more other corporations, is owned or controlled, directly or indirectly, by the same interests, and (4) that is engaged in a unitary business with those corporations, hereinafter referred to as "related corporations", shall make a combined report with those other corporations.

(b) A corporation required to make a combined report within the meaning of this section shall also include (1) a captive REIT and a captive RIC; (2) a combinable captive insurance company; and (3) an alien corporation that satisfies the conditions in paragraph (a) of this subdivision if (i) under any provision of the internal revenue code, that corporation is treated as a "domestic corporation" as defined in section seven thousand seven hundred one of the internal revenue code, or (ii) it has effectively connected income for the taxable year pursuant to clause (iii) of the opening paragraph of subdivision eight of section 11-652 of this subchapter.

(c) A corporation required or permitted to make a combined report under this section does not include (1) a corporation that is taxable under a tax imposed by subchapter two or three of this chapter or chapter eleven of this title, except for a vendor of utility services that is taxable under both chapter eleven of this title and this subchapter, or would be taxable under a tax imposed by subchapter two or three of this chapter or chapter eleven of this title, except for a vendor of utility services that is taxable under both chapter eleven of this title and this subchapter, or would have been taxable as an insurance corporation under the former part IV, title R, chapter forty-six of the administrative code as in effect on June thirtieth, nineteen hundred seventy-four; (2) a REIT that is not a captive REIT, and a RIC that is not a captive RIC; or (3) an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iii) of the opening paragraph of subdivision eight of section 11-652 of this subchapter. If a corporation is subject to tax under this subchapter solely as a result of its ownership of a limited partner interest in a limited partnership that is doing business, employing capital, owning or leasing property, or maintaining an office in this

city, and none of the corporation's related corporations are subject to tax under this subchapter, such corporation shall not be required or permitted to file a combined report under this section with such related corporations.

(d) A combined report shall be filed by the designated agent of the combined group as determined under subdivision seven of this section.

3. (a) Subject to the provisions of paragraph (c) of subdivision two of this section, a taxpayer may elect to treat as its combined group all corporations that meet the ownership requirements described in paragraph (a) of subdivision two of this section, such corporations collectively referred to in this subdivision as the "commonly owned group". If that election is made, the commonly owned group shall calculate the combined business income, combined business capital, and fixed dollar minimum amount of all members of the group in accordance with paragraph four of this subdivision, whether or not that business income or business capital is from a single unitary business.

(b) The election under this subdivision shall be made on an original, timely filed return, determined with regard to extensions, of the combined group. Any corporation entering a commonly owned group subsequent to the year of election shall be included in the combined group and is considered to have waived any objection to its inclusion in the combined group.

(c) The election shall be irrevocable, and binding for and applicable to the taxable year for which it is made and for the next six taxable years. The election will automatically be renewed for another seven taxable years after it has been in effect for seven taxable years unless it is affirmatively revoked. The revocation shall be made on an original, timely filed return, determined with regard to extensions, for the first taxable year after the completion of a seven year period for which an election under this subdivision was in place. In the case of a revocation, a new election under this subdivision shall not be permitted in any of the immediately following three taxable years. In determining the seven and three year periods described in this paragraph, short taxable years shall not be considered or counted.

4. (a) In computing the tax bases for a combined report, the combined group shall generally be treated as a single corporation, except as otherwise provided, and subject to any regulations or guidance issued by the commissioner of finance or the department of finance.

(b)(1) In computing combined business income, all intercorporate dividends shall be eliminated, and all other intercorporate transactions shall be deferred in a manner similar to the United States treasury department regulations relating to intercompany transactions under section fifteen hundred two of the internal revenue code.

(2) In computing combined capital, all intercorporate stockholdings, intercorporate bills, intercorporate notes receivable and payable, intercorporate accounts receivable and payable, and other intercorporate indebtedness, shall be eliminated.

(c) Qualification for credits, including any limitations thereon, shall be determined separately for each of the members of the combined group, and shall not be determined on a combined group basis, except as otherwise provided. However, the credits shall be applied against the combined tax of the group. To the extent that a provision of section 11-654 of this subchapter, or any other applicable section of this subchapter, limits a credit to the fixed dollar minimum amount prescribed in clause (iv) of subparagraph one of paragraph (e) of subdivision one of section 11-654 of this subchapter, such fixed dollar mini-

mum amount shall be the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(d)(1) A net operating loss deduction is allowed in computing the combined business income base. Such deduction may reduce the tax on the combined business income base to the higher of the tax on the combined capital or the fixed dollar minimum amount that is attributable to the designated agent of the combined group. A combined net operating loss deduction is equal to the amount of combined net operating loss or losses from one or more taxable years that are carried forward or carried back to a particular taxable year. A combined net operating loss is the combined business loss incurred in a particular taxable year multiplied by the combined business allocation percentage for that year determined as provided in subdivision five of this section.

(2) The combined net operating loss deduction and combined net operating loss are also subject to the provisions contained in paragraphs (a) through (g) of subdivision three of section 11-654.1 of this subchapter.

(3) In the case of a corporation that files a combined report, either in the year the net operating loss is incurred or in the year in which a deduction is claimed on account of the loss, the combined net operating loss deduction is determined as if the combined group is a single corporation and, to the extent possible and not otherwise inconsistent with this subdivision, is subject to the same limitations that would apply for federal income tax purposes under the internal revenue code and the code of federal regulations as if such corporation had filed for such taxable year a consolidated federal income tax return with the same corporations included in the combined report. If a corporation files a combined report, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the net operating loss and net operating loss deduction for the combined group must be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes.

(4) In general, any net operating loss carryover from a year in which a combined report was filed shall be based on the combined net operating loss of the group of corporations filing such report. The portion of the combined loss attributable to any member of the group that files a separate report for a succeeding taxable year will be an amount bearing the same relation to the combined loss as the net operating loss of such corporation bears to the total net operating loss of all members of the group having such losses to the extent that they are taken into account in computing the combined net operating loss.

(d-1) A prior net operating loss conversion subtraction is allowed in computing the combined business income base, as provided in subdivisions one and two of section 11-654.1 of this subchapter. Such subtraction may reduce the tax on combined business income to the higher of the tax on combined capital or the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(e)(i) Any election made pursuant to paragraph (b) of subdivision five, paragraphs (b) and (c) of subdivision five-a of section 11-652 of this subchapter, and paragraph (g) of subdivision three of section 11-654.1 of this subchapter shall apply to all members of the combined group.

(ii) The determination of whether or not the limitation on investment income provided in subparagraph (iii) of paragraph (a) of subdivision five of section 11-652 of this subchapter to the combined group shall be based on the investment income of the combined group, determined without

regard to interest expenses attributable to investment capital or investment income, and the entire net income of the combined group.

(f)(1) In the case of a captive REIT or captive RIC required under this section to be included in a combined report, entire net income shall be computed as required under subdivision seven, in the case of a captive REIT, or subdivision eight, in the case of a captive RIC, of section 11-653 of this subchapter. 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 not be allowed. For purposes of this subparagraph, the term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(2) In the case of a combinable captive insurance company required under this section to be included in a combined report, entire net income shall be computed as required by subdivision eight of section 11-652 of this subchapter.

(g) If more than one member of a combined group is eligible for any of the modifications described in paragraphs (q), (r) or (s) of subdivision eight of section 11-652 of this subchapter, all such members must utilize the same modification.

5. (a) In determining the business allocation percentage for a combined report, the receipts, net income, net gains and other items of each member of the combined group, whether or not they are a taxpayer, are included and intercorporate receipts, income and gains are eliminated. Receipts, net income, net gains and other items are sourced, and the amounts allowed in the receipts fraction are determined, as provided in section 11-654.2 of this subchapter.

(b) An election made to allocate income and gains from qualifying financial instruments pursuant to subparagraph one of paragraph (a) of subdivision five of section 11-654.2 of this subchapter shall apply to all members of the combined group.

6. Every member of the combined group that is subject to tax under this article shall be jointly and severally liable for the tax due pursuant to a combined report.

7. Each combined group shall appoint a designated agent for the combined group, which shall be a taxpayer. Only the designated agent may act on behalf of the members of the combined group for matters relating to the combined report.

§ 11-655 Reports. 1. Every corporation having an officer, agent or representative within the city, shall annually on or before March fifteenth for taxable years beginning before January first, two thousand sixteen, and annually on or before April fifteenth for taxable years beginning on or after January first, two thousand sixteen, transmit to the commissioner of finance a report in a form prescribed by the commissioner of finance, setting forth such information as the commissioner of finance may prescribe, except that a corporation that reports on the basis of a fiscal year shall transmit such report, for taxable years beginning before January first, two thousand sixteen, within two and one-half months after the close of its fiscal year, and, for taxable years beginning after January first, two thousand sixteen, within three and one-half months after the close of its fiscal year. Every taxpayer that ceases to do business in the city or to be subject to the tax imposed by this subchapter shall transmit to the commissioner of finance

a report on the date of such cessation or at such other time as the commissioner of finance may require covering each year or period for which no report was theretofore filed. Every taxpayer shall also transmit such other reports and such facts and information as the commissioner of finance may require in the administration of this subchapter. The commissioner of finance may grant a reasonable extension of time for filing reports whenever good cause exists.

An automatic extension of six months for the filing of its annual report shall be allowed any taxpayer if, within the time prescribed by the opening paragraph of this subdivision, whichever is applicable, such taxpayer files with the commissioner of finance an application for extension in such form as the commissioner of finance may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

2. Every report shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or another officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. In the case of an association, within the meaning of paragraph three of section (a) of section seventy-seven hundred one of the internal revenue code, a publicly-traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments, such certification shall be made by any person duly authorized so to act on behalf of such association, publicly-traded partnership or business. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. Blank forms of reports shall be furnished by the commissioner of finance, on application, but failure to secure such a blank shall not release any corporation from the obligation of making any report required by this subchapter.

2-a. The commissioner of finance may prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to this section, relating to payments made to shareholders owning, directly or indirectly, individually or in the aggregate, more than fifty percent of the issued capital stock of the taxpayer, where such payments are treated as payments of interest in the computation of entire net income reported on such reports.

3. If the amount of taxable income or other basis of tax for any year of any taxpayer as returned to the United States treasury department or the New York state commissioner of taxation and finance is changed or corrected by the commissioner of internal revenue or other officer of the United States or the New York state commissioner of taxation and finance or other competent authority, or where a renegotiation of a contract or subcontract with the United States or the state of New York results in a change in taxable income or other basis of tax, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States or the state of New York, or if a taxpayer, pursuant to subsection (d) of section sixty-two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section, or if a taxpayer, pursuant to subsection (f) of section one thousand eighty-one of the tax law, executes a notice of waiver of the restrictions provided in

subsection (c) of said section, such taxpayer shall report such changed or corrected taxable income or other basis of tax, or the results of such renegotiation, or such computation, or recomputation, or such execution of such notice of waiver and the changes or corrections of the taxpayer's federal or New York state taxable income or other basis of tax on which it is based, within ninety days, or one hundred twenty days, in the case of a taxpayer making a combined report under this subchapter for such year, after such execution or the final determination of such change or correction or renegotiation, or such computation, or recomputation, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file within ninety days, or one hundred twenty days, in the case of a taxpayer making a combined report under this subchapter for such year, thereafter an amended report with the commissioner of finance.

4. The provisions of section 11-654.3 of this subchapter shall apply to combined reports.

5. 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 capital of the taxpayer within the city is improperly or inaccurately reflected, the commissioner of finance is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation percentage provided only that any income directly traceable thereto be also excluded from entire net income, so as equitably to determine the tax. Where (a) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (b) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the commissioner of finance may include in the entire net income of the taxpayer the fair profits, which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. Where any taxpayer owns, directly or indirectly, more than fifty percent of the capital stock of another corporation subject to tax under section fifteen hundred two-a of the tax law and fifty percent or less of whose gross receipts for the taxable year consist of premiums, the commissioner of finance may include in the entire net income of the taxpayer, as a deemed distribution, the amount of the net income of the other corporation that is in excess of its net premium income.

6. An action may be brought at any time by the corporation counsel at the instance of the commissioner of finance to compel the filing of reports due under this subchapter.

7. Reports shall be preserved for five years, and thereafter until the commissioner of finance orders them to be destroyed.

8. Where the New York state commissioner of taxation and finance changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this subchapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

§ 11-656 Payment and lien of tax. 1. To the extent the tax imposed by section 11-653 of this subchapter shall not have been previously paid pursuant to section 11-658 of this subchapter:

(a) such tax, or the balance thereof, shall be payable to the commissioner of finance in full at the time the report is required to be filed; and

(b) such tax, or the balance thereof, imposed on any taxpayer which ceases to do business in the city or to be subject to the tax imposed by this subchapter shall be payable to the commissioner of finance at the time the report is required to be filed; all other taxes of any such taxpayer, which pursuant to the this subdivision would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. If the taxpayer, within the time prescribed by section 11-655 of this subchapter, shall have applied for an automatic extension of time to file its annual report and shall have paid to the commissioner of finance on or before the date such application is filed an amount properly estimated as provided by said section, the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount by which the tax, or the portion thereof payable on or before the date the report was required to be filed, exceeds the amount so paid, provided that:

(1) an amount so paid shall be deemed properly estimated if it is either: (i) not less than ninety percent of the tax as finally determined, or (ii) not less than the tax shown on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a report is required to be filed shall be determined without regard to any extension of time for filing such report.

2. The commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this subchapter under such conditions as the commissioner of finance deems just and proper.

3. Intentionally omitted.

§ 11-657 Declaration of estimated tax. 1. Every taxpayer subject to the tax imposed by section 11-653 of this subchapter shall make a declaration of its estimated tax for the current privilege period, containing such information as the commissioner of finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars.

2. The term "estimated tax" means the amount which a taxpayer estimates to be the tax imposed by section 11-653 of this subchapter for the current privilege period, less the amount which it estimates to be the sum of any credits allowable against the tax.

3. In the case of a taxpayer which reports on the basis of a calendar year, a declaration of estimated tax shall be filed on or before June fifteenth of the current privilege period, except that if the requirements of subdivision one of this section are first met:

(a) after May thirty-first and before September first of such current privilege period, the declaration shall be filed on or before September fifteenth; or

(b) after August thirty-first and before December first of such current privilege period, the declaration shall be filed on or before December fifteenth.

4. A taxpayer may amend a declaration under regulations of the commissioner of finance.

5. If, on or before February fifteenth of the succeeding year in the case of a taxpayer which reports on the basis of a calendar year, a taxpayer files its report for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax shown to be due on the report:

(a) such report shall be considered as its declaration if no declaration is required to be filed during the calendar or fiscal year for which the tax was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to subdivision three of this section; and

(b) such report shall be considered as the amendment permitted by subdivision four of this section to be filed on or before December fifteenth if the tax shown on the report is greater than the estimated tax shown on a declaration previously made.

6. This section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

7. If the privilege period for which a tax is imposed by section 11-653 of this subchapter is less than twelve months, every taxpayer required to make a declaration of estimated tax for such privilege period shall make such a declaration in accordance with regulations of the commissioner of finance.

8. The commissioner of finance may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as it may require.

§ 11-658 Payments on account of estimated tax. 1. For taxable years beginning before January first, two thousand sixteen, every taxpayer subject to the tax imposed by section 11-653 of this subchapter shall pay with the report required to be filed for the preceding privilege period, if any, or with an application for extension of the time and filing such report, an amount equal to twenty-five per centum of the preceding year's tax if such preceding year's tax exceeded one thousand dollars. For taxable years beginning on or after January first, two thousand sixteen, every taxpayer subject to the tax imposed by section 11-653 of this subchapter shall pay on or before the fifteenth day of March next succeeding the close of each such calendar year, or, in the case of a taxpayer that reports on the basis of a fiscal year, within two and one-half months after the close of each such fiscal year an amount equal to twenty-five per centum of the second preceding year's tax if the second preceding year's tax exceeded one thousand dollars.

2. The estimated tax with respect to which a declaration for such privilege period is required shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(a) If the declaration is filed on or before June fifteenth, the estimated tax shown thereon, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(b) If the declaration is filed after June fifteenth and not after September fifteenth of such privilege period, and is not required to be filed on or before June fifteenth of such period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid during the same privilege period pursuant to subdivision one of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(c) If the declaration is filed after September fifteenth of such privilege period, and is not required to be filed on or before September fifteenth of such privilege period, the estimated tax shown on such declaration, after applying thereto the amount, if any, paid in respect to such privilege period pursuant to subdivision one of this section, shall be paid in full at the time of the filing of the declaration.

(d) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs (b) and (c) of this subdivision shall not apply, and there shall be paid at the time of such filing all installments of estimated tax payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

3. If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect any increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after September fifteenth of the privilege period, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

4. Any amount paid shall be applied after payment as a first installment against the estimated tax of the taxpayer for the current privilege period shown on the declaration required to be filed pursuant to section 11-657 of this subchapter or, if no declaration of estimated tax is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax shown on the report required to be filed by the taxpayer for such privilege period.

5. Notwithstanding the provisions of section 11-679 of this chapter or of section three-a of the general municipal law, if an amount paid pursuant to subdivision one of this section exceeds the tax shown on the report required to be filed by the taxpayer for the privilege period during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subdivision exceeds such tax, at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this chapter, or, if no rate is set, at the rate of four percent per annum from the date of payment of the amount so paid pursuant to such subdivision to the fifteenth day of the third month following the close of the privilege period, provided, however, that no interest shall be allowed or paid under this subdivision if the amount thereof is less than one dollar or if such interest becomes payable solely because of a carryback of a net operating loss in a subsequent privilege period.

6. As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by section 11-653 of this subchapter for the preceding calendar or fiscal year, or, for purposes of computing the first installment of estimated tax when either the mandatory first installment is paid pursuant to subdivision one of this section or an application has been filed for extension of the time for filing the report required to be filed for such preceding calendar or fiscal year, the amount properly estimated pursuant to section 11-657 of this subchapter as the tax imposed upon the taxpayer for such calendar or fiscal year. As used in this section, "the second preceding year's tax" means the tax imposed upon the taxpayer by section 11-653 of this subchapter for the second preceding calendar of fiscal year.

7. This section shall apply to a privilege period of less than twelve months in accordance with regulations of the commissioner of finance.

8. The provisions of this section shall apply to privilege periods of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

9. The commissioner of finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax required pursuant to this section, on such terms and conditions as the commissioner of finance may require including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however, that interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of seven and one-half percent per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subdivision.

10. A taxpayer may elect to pay any installment of estimated tax prior to the date prescribed in this section for payment thereof.

11. Intentionally omitted.

§ 11-659 Collection of taxes. Every foreign corporation, other than a moneyed corporation, subject to the provisions of this subchapter, except a corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or a vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this subchapter may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon the secretary of state. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon him or her to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon the secretary of state to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies

of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having a certificate of authority under section eight hundred five of the limited liability company law or having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this subchapter, may be made by either: (a) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (b) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy thereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

§ 11-660 Limitations of time. The provisions of the civil practice law and rules relative to the limitation of time enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this subchapter, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes became due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

## SUBCHAPTER 4
## TRANSPORTATION CORPORATION TAX

§ 11-662 Tax on transportation corporations and associations. 1. The term "corporation" as used in this subchapter shall include any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments.

2. For the privilege of doing business or holding property in the city every corporation, joint-stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry, except a ferry company operating between the city of Staten Island and any of

the boroughs of the city of New York under a lease granted by the city of New York, or navigation business, or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint-stock company or association subject to taxation under chapter eleven of this title, shall pay, in advance, an annual tax to be computed upon the basis of the amount of its capital stock within the city during the preceding year, and upon each dollar of such amount.

3. The measure of the amount of capital stock in the city, except as hereinafter provided, shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, employed in any business within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever employed in business. Provided, however, that in the case of a corporation taxable hereunder only for the privilege of holding property, the measure shall be such a portion of the issued capital stock as the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, located within the city, bear to the gross assets, exclusive of obligations issued by the United States and cash on hand and on deposit, wherever located. The capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the assets of the issuing corporation, other than patents, copyrights, trademarks, contracts and good will, are located.

4. Every corporation, joint-stock company or association subject to taxation under this section shall, in any event, pay annually, for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, a minimum tax of not less than ten dollars nor less than one mill, and for taxable years beginning on or after January first, nineteen hundred seventy-five, a minimum tax of not less than fifteen dollars nor less than one and one-half mills, on each dollar of such a portion of the net value of its issued capital stock, which net value for the purposes of this section shall be deemed to be not less than five dollars per share, as may be determined upon such of the bases herein provided for the measurement thereof as is applicable. The term "net value" as used in this section shall be construed to mean not less than the difference between a corporation's assets and liabilities, and not less than the average price at which such stock sold during the year covered by the report which forms the basis for the tax. But if the dividends paid on the par value of any kind of capital stock during any year ending with the thirty-first day of December amounts to six or more than six per centum, the tax upon such kind of capital stock shall be at the rate of one-quarter of a mill for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, and at the rate of four-tenths of a mill for taxable years beginning on or after January first, nineteen hundred seventy-five for each one per centum of dividends paid and shall be computed upon the par value of such capital stock, unless such a tax be less than the minimum tax hereinbefore provided in this section and the commissioner of finance shall, for such purpose, make a fair and equitable apportionment of the assets of the corporation, joint-stock company or association, between or among the different kinds of stock.

5. If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereof, has been paid, and upon the other no dividend has been paid, or the dividend or dividends paid thereon amount to

less than six per centum upon the par value thereof, then the tax shall be fixed upon each kind as hereinbefore provided.

6. The dividend rate for a corporation having stock without nominal or par value shall be determined by dividing the amount paid as a dividend or dividends during the year by the amount paid in on such stock and, if the rate is six per centum or more, then for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, and for taxable years beginning on or after January first, nineteen hundred seventy-five, the rate of four-tenths of a mill for each one per centum of dividends shall be applied to the amount paid in on such stock, unless such tax be less than the minimum tax hereinbefore in this section provided for. Any consideration given by a corporation for the purchase of its own stock in excess of the consideration received by it for the issuance of such stock shall for the purposes of this section, be considered as a dividend.

7. The owning or holding in the city by any corporation of property, other than property exclusively in interstate or foreign commerce, shall constitute carrying on business within the city within the intent of this section, except that a corporation having no property in the city other than a bank balance or stocks or bonds, or one or more of such kinds of property, either held for safe keeping or pledged as collateral security shall not be taxable under this section, and further provided that any corporation having only office furniture or fixtures, a bank balance, and stocks or bonds pledged as collateral security or merely deposited for safe keeping, shall not be taxable under this section.

8. The measure of the amount of capital stock in the city of an aviation corporation shall be a portion of the issued capital stock determined by applying thereto the arithmetical average of the following three ratios: (a) the ratio which the aircraft arrivals and departures within the city scheduled by any such corporation during the preceding calendar year bear to the total aircraft arrivals and departures within and without the city scheduled by it during the same period, provided that in the case of non-scheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (b) the ratio which the revenue tons handled by such corporation at airports within the city during the preceding calendar year bear to the total revenue tons handled by it at airports within and without the city during the same period; and (c) the ratio which such corporation's originating revenue within the city for the preceding calendar years bears to its total originating revenue within and without the city for the same period. As used in this section, the term "aircraft arrivals and departures" means the number of scheduled landings and takeoffs of the aircraft of an aviation corporation, and the number of scheduled air pickups and deliveries by the aircraft of such corporation, and in the case of non-scheduled operations shall include all landings and takeoffs, pickups and deliveries; the term "originating revenue" means revenue to any such corporation from the transportation of revenue passengers and revenue property first received by such corporation either as originating or connecting traffic at airports; and the term "revenue tons handled" by any such corporation at an airport means the weight in tons of revenue passengers, at two hundred pounds per passenger, and revenue cargo first received either as originating or connecting traffic or finally discharged by such corporation at such airport.

9. The measure of the capital stock in the city of a corporation engaged in the operation of vessels in foreign commerce shall be such portion of the issued capital stock as the aggregate number of working days in territorial waters of the city of all such vessels bears to the aggregate number of working days of all such vessels. The dividend rate for such a corporation shall be determined by dividing the amount paid as a dividend or dividends on all classes of stock during the year by the amount of paid-in capital and, if the rate is six per centum or more, then for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, the rate of one-quarter of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital, and for taxable years beginning on or after January first, nineteen hundred seventy-five, the rate of four-tenths of a mill for each one per centum of dividends shall be applied to the amount of such paid-in capital.

§ 11-663 Additional tax on transportation corporations and associations. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of aviation, steamboat, ferry, except a ferry company operating between the city of Staten Island and any of the boroughs of the city of New York under a lease granted by the city of New York, or navigation business or formed for or principally engaged in the conduct of two or more of such businesses, except a corporation, joint-stock company or association subject to taxation under chapter eleven of this title, shall pay for the privilege of carrying on its business in the city, a tax which shall be equal to five-tenths of one per centum for taxable years ending on or before December thirty-first, nineteen hundred seventy-four, and seventy-five hundredths of one per centum for taxable years beginning on or after January first, nineteen hundred seventy-five upon its gross earnings from all sources within the city, excluding earnings derived from business of a character other than wholly intra-city. Provided, however, gross earnings from transportation business both originating and terminating within the city and traversing both the city and any other city, any state or states or any country shall be subject to the tax imposed by this section and such earnings shall be allocated to the city in the same ratio that the mileage within the city bears to the total mileage of such business.

§ 11-664 Receivers, etc., conducting corporate business. Any receiver, liquidator, referee, trustee, assignee, or other fiduciary or officer or agent appointed by any court, who conducts the business of any corporation, joint-stock company or association shall be subject to the tax or taxes imposed by this subchapter in the same manner and to the same extent as if the business were conducted by the agents or officers of such corporation, joint-stock company or association. A dissolved corporation, joint-stock company or association which continues to conduct business shall also be subjected to the tax imposed by this subchapter.

§ 11-665 Service of process; limitation of time. 1. Every foreign corporation, other than a moneyed corporation, subject to the provisions of this subchapter, except a corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, shall file in the department of state a certificate of designation in its corporate name, signed and acknowledged by its president or vice-president or its secretary or treasurer, under its corporate seal, designating the secretary of state as its agent upon whom process in any action provided for by this subchapter or subchapter five of this chap-

ter may be served within this state, and setting forth an address to which the secretary of state shall mail a copy of any such process against the corporation which may be served upon the secretary of state. In case any such corporation shall have failed to file such certificate of designation, it shall be deemed to have designated the secretary of state as its agent upon whom such process against it may be served; and until a certificate of designation shall have been filed the corporation shall be deemed to have directed the secretary of state to mail copies of process served upon the secretary of state to the corporation at its last known office address within or without the state. When a certificate of designation has been filed by such corporation the secretary of state shall mail copies of process thereafter served upon the secretary of state to the address set forth in such certificate. Any such corporation, from time to time, may change the address to which the secretary of state is directed to mail copies of process, by filing a certificate to that effect executed, signed and acknowledged in like manner as a certificate of designation as herein provided. Service of process upon any such corporation or upon any corporation having authority to do business by virtue of section thirteen hundred five of the business corporation law, in any action commenced at any time pursuant to the provisions of this subchapter or subchapter five of this chapter may be made by either: (1) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service duplicate copies thereof at the office of the department of state in the city of Albany, in which event the secretary of state shall forthwith send by registered mail, return receipt requested, one of such copies to the corporation at the address designated by it or at its last known office address within or without the state, or (2) personally delivering to and leaving with the secretary of state, a deputy secretary of state or with any person authorized by the secretary of state to receive such service, a copy thereof at the office of the department of state in the city of Albany and by delivering a copy hereof to, and leaving such copy with, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, or cashier of such corporation, or the officer performing corresponding functions under another name, or a director or managing agent of such corporation, personally without the state. Proof of such personal service without the state shall be filed with the clerk of the court in which the action is pending within thirty days after such service, and such service shall be complete ten days after proof thereof is filed.

2. The provisions of the civil practice law and rules relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this subchapter or subchapter five of this chapter, provided, however, that as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such tax or penalty and as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such tax or penalty, all such taxes and penalties shall cease to be a lien on such real estate as against such purchasers or holders after the expiration of ten years from the date such taxes become due and payable. The limitations provided for in this subdivision shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subse-

quent grantee corporation controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 11-666 Exemption of corporations owned by a municipality. The provisions of this subchapter shall not apply to any corporation all of the capital stock of which is owned by a municipal corporation of this state.

§ 11-667 Reports of corporations. Corporations liable to pay a tax under this subchapter shall report as follows:

1. Every corporation, association or joint-stock company liable to pay a tax under section 11-662 of this subchapter shall, on or before March first in each year, make a written report to the commissioner of finance of its condition at the close of its business on the preceding December thirty-first, stating the amount of its authorized capital stock, the amount of stock paid-in, the date and rate per centum of each dividend paid by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in the city during such year.

2. Every corporation, joint-stock company or association liable to pay an additional tax under section 11-663 of this subchapter shall also, on or before February fifteenth, May fifteenth, August fifteenth and November fifteenth in each year, make a written report to the commissioner of finance of the amount of its gross earnings subject to the tax imposed by said section for the quarter year ended on the last day of the second month preceding that in which the report is required to be filed. Any such corporation, joint-stock company or association which ceases to be subject to the tax imposed by section 11-663 of this subchapter by reason of a liquidation, dissolution, merger or consolidation with any other corporation, or any other cause, shall, on the date of such cessation or at such other time as the commissioner of finance may require, make a written report to the commissioner of finance of the amount of its gross earnings subject to the tax imposed by section 11-663 of this subchapter for any period for which no report was therefor filed.

3. The commissioner of finance may for good cause shown extend the time within which any corporation is required to report by this subchapter.

4. Every report required by this subchapter shall have annexed thereto a certification by the president, vice-president, treasurer, assistant treasurer, or chief accounting officer or any other officer of the corporation, association or joint-stock company duly authorized so to act, or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation. Such reports shall contain any other data, information or matter which the commissioner of finance may require to be included therein, and it may prescribe the form in which such reports shall be made. When so prescribed such forms shall be used in making the report. The commissioner of finance may require at any time a further or supplemental report under this subchapter which shall contain information and data upon such matters as the commissioner of finance may specify. Reports shall be preserved for five years, and thereafter until the commissioner of finance orders them to be destroyed.

§ 11-668 Payment of tax and penalties. 1. The taxes imposed by sections 11-662 and 11-663 of this subchapter shall be due and payable

at the time of the filing of the report required by section 11-667 of this subchapter or, in case such a report is not filed when due, on the last day specified for the filing thereof, except that the tax upon dividends imposed by section 11-663 of this subchapter shall be due and payable at the time of filing the report for the period ending June thirtieth, or, in case such report is not filed when due, on the last day specified for the filing thereof.

2. Where an application for consent to dissolution, as provided by section one thousand four of the business corporation law, is filed with the commissioner of finance prior to the commencement of any tax year or period by a corporation subject to tax under this subchapter, such corporation shall not be liable for any tax imposed by this subchapter for such following year or period, except as may be otherwise provided in section 11-664 of this subchapter, provided that the certificate of dissolution for such corporation is duly filed in the office of the secretary of state within twenty days after the filing of such application.

3. Notwithstanding any other provision of this subchapter, the commissioner of finance may grant a reasonable extension of time for payment of any tax imposed by this subchapter under such conditions as the commissioner deems just and proper.

§ 11-669 Taxable years to which taxes apply. The taxes imposed by this subchapter are imposed for each taxable year or period beginning with taxable years or periods ending in or with the calendar year nineteen hundred sixty-six, provided, however, no tax shall be imposed pursuant to this subchapter for any taxable year or period ending after December thirty-first, nineteen hundred eighty-eight.

§ 11-670 First reports for payments for nineteen hundred sixty-six. If any report under this subchapter is due prior to September eleventh, nineteen hundred sixty-six, such report and the payments therewith shall be filed and paid by such date.

## SUBCHAPTER 5
## CORPORATE TAX PROCEDURE AND ADMINISTRATION

§ 11-671 Application of subchapter. 1. General. The provisions of this subchapter shall apply to the administration of and the procedures with respect to the taxes imposed by subchapters two, three, three-A and four of this chapter.

2. Definitions. As used in this subchapter: (a) the term "named subchapters" means subchapters two, three, three-A and four of this chapter;

(b) The term "return" means a report or return of tax, but does not include a declaration of estimated tax;

(c) The term "corporation" includes a corporation, association, joint-stock company or other entity subject to tax under any of the named subchapters; and

(d) The term "person" includes a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual liable for the tax imposed by any of the named subchapters or under a duty to perform an act under any of the named subchapters. Upon notice to the commissioner of finance that any person is acting for any corporation in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties and privileges of such corporation in respect of a tax imposed by any of the named subchapters, except as otherwise specifically provided and except that the tax shall be collected from

the estate or other assets of such corporation in the hands of such fiduciary, until notice is given that the fiduciary capacity has terminated.

§ 11-672 Notice of deficiency. 1. General. If upon examination of a taxpayer's return, the commissioner of finance determines that there is a deficiency of tax, the commissioner may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a tax return, the commissioner of finance is authorized to estimate the taxpayer's city tax liability from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer, at its last known address in or out of the city. If the taxpayer has terminated its existence, a notice of deficiency may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

2. Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, such notice shall be an assessment of the amount of tax specified therein, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax appeals tribunal a petition under section 11-680 of this subchapter. If the notice of deficiency or conciliation decision is addressed to a taxpayer whose last known address is outside of the United States, such period shall be one hundred fifty days instead of ninety days.

3. Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-685 of this subchapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition with the tax appeals tribunal contesting such notice, nor, if a petition with respect to the taxable year has been both served on the commissioner of finance and filed with the tax appeals tribunal, until the decision of the tax appeals tribunal has become final. For exception in the case of judicial review of the decision of the tax appeals tribunal, see subdivision three of section 11-681 of this subchapter.

4. Exceptions for mathematical errors. If a mathematical error appears on a return, including an overstatement of the amount paid as estimated tax, the commissioner of finance shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision two of section 11-680 of this subchapter, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or collection be prohibited by the provisions of subdivision three of this section.

5. Exception where federal or New York state change or correction is not reported.

(a) If the taxpayer fails to comply with subchapter two, three or three-A of this chapter in not reporting a change or correction or renegotiation, or computation or recomputation of tax, increasing or decreasing its federal or New York state taxable income, alternative minimum taxable income or other basis of tax as reported on its federal or New York state income tax return or in not reporting a change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver executed pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code or pursuant to subdivision (f) of section one thousand eighty-one of the tax law, instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such increased or decreased federal or New York state taxable income, alternative minimum taxable income or other basis of tax by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or renegotiation, or computation or recomputation of tax, or an amended return, where such return was required by subchapter two or three of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision two of section 11-680 of this subchapter, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to the taxpayer's last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

6. Waiver of restrictions. The taxpayer shall at any time, whether or not a notice of deficiency has been issued, have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the commissioner of finance.

7. Two or more corporations. In case of a combined return under subchapter two or three-A or a consolidated return under subchapter three of two or more corporations, the commissioner of finance may determine a deficiency of tax under subchapter two, three or three-A of this chapter with respect to the entire tax due upon such return against any taxpayer included therein. In the case of a taxpayer which might have been included in such a return under subchapter two, three or three-A of this chapter when the tax was originally reported, the commissioner of finance may determine a deficiency of tax under subchap-

ter two, three or three-A of this chapter against such taxpayer and against any other taxpayers which might have been included in such a return.

8. Deficiency defined. For the purposes of this subchapter, a deficiency means the amount of the tax imposed by the named subchapters, or any of them, less: (a) the amount shown as the tax upon the taxpayer's return, whether the return was made or the tax computed by it or by the commissioner of finance, and less (b) the amounts previously assessed, or collected without assessment, as a deficiency and plus (c) the amount of any rebates. For the purpose or this definition, the tax imposed by subchapter two, three or three-A of this chapter and the tax shown on the return shall both be determined without regard to any payment of estimated tax; and a rebate means so much of an abatement, credit, refund or other repayment, whether or not erroneous, as was made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

9. Exception where change or correction of sales and compensating use tax liability is not reported.

(a) If a taxpayer fails to comply with subchapter two or three-A of this chapter in not reporting a change or correction of its sales and compensating use tax liability or in not filing a copy of an amended return or report relating to its sales and compensating use tax liability, instead of the mode and time of assessment provided for in subdivision two of this section, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under subchapter two or three-A of this chapter, by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required by subchapter two or three-A, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

(b) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision six of section 11-678, limiting credits or refunds after petition to the tax appeals tribunal, or subdivision two of section 11-680, authorizing the filing of a petition with the tax appeals tribunal based on a notice of deficiency, nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision three of this section.

(c) If the taxpayer has terminated its existence, a notice of additional tax due may be mailed to its last known address in or out of the city, and such notice shall be sufficient for purposes of this subchapter. If the commissioner of finance has received notice that a person is acting for the taxpayer in a fiduciary capacity, a copy of such notice shall also be mailed to the fiduciary named in such notice.

§ 11-673 Assessment. 1. Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return, including any amended return showing an increase of tax. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision two of section 11-672 of this subchapter if no petition is both served on the commissioner of finance and

filed with the tax appeals tribunal, or if a petition is so served and filed, then upon the date when a decision of the tax appeals tribunal establishing the amount of the deficiency becomes final. If a report or an amended return filed pursuant to subchapter two, three or three-A of this chapter concedes the accuracy of a federal or New York state adjustment or change or correction or renegotiation or computation or recomputation of tax, any deficiency in tax under subchapter two, three or three-A of this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-674 of this subchapter.

If a report filed pursuant to subchapter two of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax under subchapter two or three-A of this chapter resulting therefrom shall be deemed assessed on the date of filing such report, and such assessment shall be timely notwithstanding section 11-674 of this subchapter.

If a notice of additional tax due, as prescribed in subdivision five of section 11-672 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state adjustment or change or correction or renegotiation or computation or recomputation of tax, or an amended return, where such return was required by subchapter two, three or three-A of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous.

If a notice of additional tax due, as prescribed in subdivision nine of section 11-672 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the state change or correction, or a copy of an amended return or report, where such copy was required by subchapter two or three-A of this chapter, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous.

Any amount paid as a tax or in respect of a tax, other than amounts paid as estimated tax, shall be deemed to be assessed upon the date of receipt of payment notwithstanding any other provisions.

2. Other assessment powers. If the mode or time for the assessment of any tax under the named subchapters, including interest, additions to tax and assessable penalties, is not otherwise provided for, the commissioner of finance may establish the same by regulations.

3. Estimated tax. No unpaid amount of estimated tax under subchapter two, three or three-A of this chapter shall be assessed.

4. Supplemental assessment. The commissioner of finance may, at any time within the period described for assessment, make a supplemental assessment, subject to the provisions of section 11-672 of this subchapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

5. Cross reference. For assessment in case of jeopardy, see section 11-685 of this subchapter.

§ 11-674 Limitations on assessment. 1. General. Except as otherwise provided in this section, any tax under the named subchapters shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed.

2. Time return deemed filed. For the purposes of this section, a return of tax filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof shall be deemed to be filed on such last day.

3. Exceptions.

(a) Assessment at any time. The tax may be assessed at any time if:

(1) no return is filed,

(2) a false or fraudulent return is filed with intent to evade tax,

(3) in the case of the tax imposed under subchapter two, three or three-A of this chapter, the taxpayer fails to file a report or amended return required thereunder, in respect of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, or in respect of a change or correction or renegotiation or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or

(4) in the case of the tax imposed under subchapter two or three-A of this chapter, the taxpayer fails to file a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, relating to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by subchapter two or three-A was claimed.

(b) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner of finance and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Report of federal or New York state change or correction. In the case of the tax imposed under subchapter two, three or three-A of this chapter, if the taxpayer files a report or amended return required thereunder, in respect of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, or in respect of a change or correction or renegotiation, or in respect of the execution of a notice of waiver report of which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment, if not deemed to have been made upon the filing of the report or amended return may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal or New York state change or correction or renegotiation, or computation or recomputation of tax. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(d) Deficiency attributable to net operating loss carryback. If a deficiency of tax under subchapter two or three-A of this chapter is attributable to the application to taxpayer of a net operating loss carryback or a capital loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(e) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of

a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(f) Request for prompt assessment. The tax shall be assessed within eighteen months after written request therefor, made after the return is filed, by the taxpayer or by a fiduciary representing the taxpayer, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision four of this section. This subdivision shall not apply unless:

(1) (A) such written request notifies the commissioner of finance that the taxpayer contemplates dissolution at or before the expiration of such eighteen-month period, (B) the dissolution is in good faith begun before the expiration of such eighteen-month period, (C) the dissolution is completed;

(2) (A) such written request notifies the commissioner of finance that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(g) Change of the allocation of taxpayer's income or capital. (1) With regard to taxable years beginning before January first, two thousand fifteen, no change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based shall be made where an assessment of tax is made during the additional period of limitation under subparagraph three or four of paragraph (a) of this subdivision, or under paragraph (c), (d) or (i) of this subdivision; and where any such assessment has been made, or where a notice of deficiency has been mailed to the taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such assessment or on the taxpayer's petition for redetermination of such deficiency.

(2) With regard to taxable years beginning on or after January first, two thousand fifteen, no change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based shall be made where an assessment of tax is made during the additional period of limitation under subparagraph three or four of paragraph (a) or under paragraph (c), (d) or (i) of this subdivision, except to the extent such assessment is based on an increase or decrease in New York state taxable income or other basis of tax or New York state tax, or based on a change, correction or renegotiation of tax, or based on the execution of a notice of waiver report which is required thereunder, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for New York state income tax purposes; and where any such assessment has been made, or where a notice of deficiency has been mailed to the taxpayer on the basis of any such proposed assessment, no change of the allocation of income or capital shall be made in a proceeding on the taxpayer's claim for refund of such assessment or on the taxpayer's petition for redetermination of such deficiency, except to the extent such assessment is based on an increase or decrease in New York state taxable income or other basis of tax or New York state tax, or based on a change or correction or renegotiation of tax, or based on the execution of a notice of waiver report which is required thereunder, or computation or recomputation of tax,

which is treated in the same manner as if it were an overpayment for New York state income tax purposes.

(h) Report concerning waste treatment facility. Under the circumstances described in subparagraph three of paragraph (g) of subdivision eight of section 11-602 of this chapter or in subparagraph three of paragraph (g) of subdivision eight of section 11-652 of this chapter, the tax may be assessed within three years after the filing of the report containing the information required by such paragraph.

(i) Report of changed or corrected sales and compensating use tax liability. In the case of a tax imposed under subchapter two or three-A of this chapter, if the taxpayer files a report or amended return or report required thereunder, in respect of a change or correction of sales and compensating use tax liability, the assessment, if not deemed to have been made upon the filing of the report, may be made at any time within two years after such report or amended return or report was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

4. Omission of income on return. The tax may be assessed at any time within six years after the return was filed if a taxpayer omits from gross income required to be reported on a return under any of the named subchapters an amount properly includable therein which is in excess of twenty-five per centum of the amount of gross income stated in the return.

For the purposes of this subdivision:

(a) the term "gross income" means gross income for federal income tax purposes as reportable on a return under subchapter two or three-A of this chapter and "gross earnings", "gross income," "gross operating income" and "gross direct premiums less return premiums," as those terms are used in whichever of the named subchapters is applicable;

(b) there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of finance of the nature and amount of such item.

5. Suspension of running of period of limitations. The running of the period of limitations on assessment or collection of tax or other amount, or of a tranferee's liability, shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner of finance is prohibited under subdivision three of section 11-672 of this subchapter from making the assessment or from collecting by levy.

§ 11-675 Interest on underpayment. 1. General. If any amount of tax is not paid on or before the last date prescribed in whichever of the named subchapters is applicable for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

2. Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax under subchapter two, three or three-A of this chapter.

3. Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in whichever of the named subchapters is applicable, including any extension of time, and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

4. Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner of finance for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

5. Tax reduced by carryback. If the amount of tax under subchapter two or three-A for any taxable year is reduced by reason of a carryback of a net operating loss or a capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or capital loss arises. Such filing date shall be determined without regard to extensions of time to file.

6. Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the taxes under the named subchapters. Any reference in this subchapter to the tax imposed by the named subchapters, or any of them, shall be deemed also to refer to interest imposed by this section on such tax.

7. Interest on penalties or addition to tax. Interest shall be imposed under subdivision one in respect to any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision two of section 11-683 of this subchapter in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

8. Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision two of section 11-683 of this subchapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

9. Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected respectively.

10. Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of finance, shall bear interest at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

11. Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 11-676 Additions to tax and civil penalties. 1. (a) Failure to file return. (A) In case of failure to file a return under the named subchapters on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under the named subchapters on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(c) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under the named subchapters which is not so shown, including an assessment made pursuant to subdivision one of section 11-673 of this subchapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(d) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph (a) of this subdivision shall be reduced by the amount of the addition under paragraph (b) of this subdivision for any month to which an addition applies under both paragraphs (a) and (b). In any case described in subparagraph (B) of paragraph (a) of this subdivision, the amount of the addition under such paragraph (a) shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (c) of this subdivision shall be reduced by the amount of the addition under paragraph (a) of this subdivision, determined without regard to subparagraph (B) of such paragraph (a), which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

2. Deficiency due to negligence. (a) If any part of a deficiency is due to negligence or intentional disregard of this subchapter or any of the named subchapters or rules or regulations thereunder, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

(b) There shall be added to the tax, in addition to the amount determined under paragraph (a) of this subdivision, an amount equal to fifty percent of the interest payable under subdivision one of section 11-675 with respect to the portion of the deficiency described in such paragraph (a) which is attributable to the negligence or intentional disregard referred to in such paragraph (a), for the period beginning on the last date prescribed by law for payment of such deficiency, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(c) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in gross income, as that term is defined in paragraph (a) of subdivision four of section 11-674, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any addition to tax is imposed under this subdivision by reason of the preceding sentence, the amount of the addition to tax imposed by paragraph (a) of this subdivision shall be five percent of the portion of the underpayment which is attributable to the failure described in this paragraph.

3. Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax under subchapter two, three or three-A of this chapter, or fails to pay all or any part of an amount which is applied as an installment against such estimated tax, it shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the underpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of seven and one-half percent per annum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. Provided, however, that, for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen, no amount shall be added to the tax with respect to the portion of such

tax related to the amount of any interest deductions directly or indirectly attributable to the amount included in exempt CFC income pursuant to subparagraph (ii) of paragraph (b) of subdivision five-a of section 11-652 of this chapter or the forty percent reduction of such exempt CFC income in lieu of interest attribution if the election described in paragraph (b) of subdivision five-a of such section is made. The amount of the underpayment shall be, with respect to any installment of estimated tax computed on the basis of either the preceding year's tax or the second preceding year's tax, the excess of the amount required to be paid over the amount, if any, paid on or before the last day prescribed for such payment or, with respect to any other installment of estimated tax, the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year, or if no return was filed, ninety percent of the tax for such year, over the amount, if any, of the installment paid on or before the last day prescribed for such payment. In any case in which there would be no underpayment if "eighty percent" were substituted for "ninety percent" each place it appears in this subdivision, the addition to the tax shall be equal to seventy-five percent of the amount otherwise determined. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the termination of existence of the taxpayer.

4. Exception to addition for underpayment of estimated tax. The addition to tax under subdivision three of this section with respect to any underpayment of any amount which is applied as an installment against estimated tax under subchapter two, three or three-A of this chapter shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of any such amount equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(a) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(b) An amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year, or

(c) (i) An amount equal to ninety per centum of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(1) for the first three months or the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

(2) for the first six months or the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(3) for the first nine months or the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(ii) For purposes of subparagraph (i) of this paragraph the taxable income shall be placed on an annualized basis by:

(1) multiplying it by twelve, or, in the case of a taxable year of less than twelve months, the number of months in the taxable year, and

(2) dividing the resulting amount by the number of months in the taxable year, three, five, six, eight, nine or eleven, as the case may be, referred to in subparagraph (i) of this paragraph, or

(d) (i) If the base period percentage for any six consecutive months of the taxable year equals or exceeds seventy percent, an amount equal to ninety percent of the tax determined in the following manner:

(A) take the taxable income for all months during the taxable year preceding the filing month,

(B) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

(C) determine the tax on the amount determined under clause (B) of this subparagraph, and

(D) multiply the tax determined under clause (C) of this subparagraph by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(ii) For purposes of subparagraph (i) of this paragraph:

(A) the base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the three preceding taxable years bears to the taxable income for the three preceding taxable years. The commissioner of finance may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances, and

(B) the term "filing month" means the month in which the installment is required to be paid.

5. (a) Except as provided in paragraph (b) of this subdivision, paragraphs (a) and (b) of subdivision four of this section shall not apply in the case of any corporation, or any predecessor corporation, which had entire net income, or the portion thereof allocated within the city, of one million dollars or more for any taxable year during the three taxable years immediately preceding the taxable year involved.

(b) The amount treated as the estimated tax under paragraphs (a) and (b) of subdivision four of this section shall in no event be less than seventy-five percent of the tax shown on the return for the taxable year beginning in nineteen hundred eighty-three or, if no return was filed, seventy-five percent of the tax for such year.

6. Deficiency due to fraud. (a) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to two times the deficiency.

(b) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision one or two of this section.

7. Additional penalty. Any person who with fraudulent intent shall fail to pay under the named subchapters any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under any of the named subchapters, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this subchapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

8. Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this subchapter to tax imposed by any of the named subchapters shall be deemed also to refer to the additions to tax and penalties

provided by this section. For purposes of section 11-672 of this subchapter, this subdivision shall not apply to:

(a) any addition to tax under subdivision one of this section except as to that portion attributable to a deficiency;

(b) any addition to tax under subdivision three or fourteen of this section; and

(c) any additional penalties under subdivisions seven and twelve of this section.

9. Determination of deficiency. For purposes of subdivisions two and six of this section the amount shown as the tax by the taxpayer upon its return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

10. Person defined. For purposes of subdivisions seven and twelve of this section, the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

11. Substantial understatement of liability. If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year or five thousand dollars. For purposes of this subdivision, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return, reduced by any rebate, within the meaning of subdivision eight of section 11-672 of this subchapter. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

12. Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (a) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(b) For purposes of paragraph (a) of this subdivision, the term "procures" includes ordering, or otherwise causing, a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person, whether or not a director, officer, employee, or agent of the taxpayer involved, over whose activities the person has direction, supervision, or control.

(c) For purposes of paragraph (a) of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(d) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

13. Failure to file report of information relating to certain interest payments. In case of failure to file the report of information required under either subdivision two-a of section 11-605 of this chapter or subdivision two-a of section 11-655 of this chapter, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax a penalty of five hundred dollars.

14. Failure to include on return information relating to issuer's allocation percentage. Where a return is filed but does not contain (1) the information necessary to compute the taxpayer's issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this chapter, where the same is called for on the return, or, (2) the taxpayer's issuer's allocation percentage, where the same is called for on the return but where all of the information necessary for the computation of such percentage is not called for on the return, then unless it is shown that such failure is due to reasonable cause and not due to willful neglect there shall be added to the tax a penalty of five hundred dollars.

15. False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department shall be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. Such penalty shall be in addition to any other penalty or addition provided by law.

§ 11-677 Overpayment. 1. General. The commissioner of finance, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this title on the taxpayer who made the overpayment, and the balance shall be refunded out of the proceeds of the tax. Such credit of an overpayment shall be applied before such overpayment, or any portion thereof, is paid to the state commissioner of taxation and finance pursuant to section one hundred seventy-one-m of the tax law.

2. Credits against estimated tax. The commissioner of finance may prescribe regulations providing for the crediting against the estimated tax under subchapter two, three or three-A of this chapter for any taxable year of the amount determined to be an overpayment of tax under any such subchapter for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax under subchapter two, three or three-A of this chapter for the succeeding taxable year, whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year, and no claim for credit

or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

3. Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

4. Assessment and collection after limitation period. If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

5. Assignment of overpayment. A credit for an overpayment of tax under any of the named subchapters may be assigned by the taxpayer to a corporation liable to pay taxes under any of the named subchapters, and the assignee of the whole or any part of such credit, on filing such assignment with the commissioner of finance, shall thereupon be entitled to credit upon the books of the commissioner of finance for the amount thereof on its current account for taxes, in the same manner and to the same effect as though the credit had originally been allowed in its favor.

6. Notwithstanding article fifty-two of the civil practice law and rules or any other provision of law to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of such department, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

§ 11-678 Limitations on credit or refund. 1. General. Claim for credit or refund of an overpayment of tax under any of the named subchapters shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed. For special restriction in a proceeding on a claim for refund of tax paid pursuant to an assessment made as a result of: (a) a net operating loss carryback, or (b) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (c) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

2. Extension of time by agreement. If any agreement under the provisions of paragraph (b) of subdivision three of section 11-674 of this subchapter, extending the period of assessment of tax, is made within the period prescribed in subdivision one of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the

period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision one if a claim had been filed on the date the agreement was executed.

3. Notice of change or correction of federal or New York state income or other basis of tax. If a taxpayer is required by subchapter two, three or three-A of this chapter to file a report or amended return in respect of (a) a decrease or increase in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax, (b) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. If the report or amended return required by subchapter two, three or three-A of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal or New York state change or correction. The amount of such credit or refund: (c) shall, (i) for taxable years beginning before January first, two thousand fifteen, be computed without change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based, and, (ii) for taxable years beginning on or after January first, two thousand fifteen, be computed without change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based to the extent that the claim for refund arises from a decrease or increase in federal taxable income or other basis of tax or federal tax, or from a federal change, correction, renegotiation, computation or recomputation of tax, which is treated in the same manner as if it were an overpayment for federal income tax purposes, and (d) shall not exceed the amount of the reduction in tax attributable to such decrease or increase in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or to such federal or New York state change or correction or renegotiation, or computation or recomputation of tax.

This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

4. Overpayment attributable to net operating loss carryback or capital loss carryback. A claim for credit or refund of so much of an overpayment under subchapter two or three-A of this chapter as is attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback shall be filed within three years from the time the return was due, including extensions thereof, for the taxable year of the loss, or within the period prescribed in subdivision two of this section in respect of such taxable year, or within the period prescribed in subdivision three of this section, where applicable, in respect to the taxable year to which the net operating loss or capital loss is carried back, whichever expires the latest. Where such claim for credit or refund is filed after the expiration of the period prescribed in

subdivision one or in subdivision two of this section where applicable, in respect to the taxable year to which the net operating loss is carried back, the amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based.

5. Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision six of this section or subdivision four of section 11-681 of this subchapter, after the expiration of the applicable period of limitation specified in this subchapter, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under the named subchapters.

6. Effect of a petition to tax appeals tribunal. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-672 of this subchapter and if the taxpayer files a timely petition with the tax appeals tribunal under section 11-680 of this subchapter, the tax appeals tribunal may determine that the taxpayer has made an overpayment for such year, whether or not it also determines a deficiency for such year. No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(a) as to overpayment determined by a decision of the tax appeals tribunal which has become final; and

(b) as to any amount collected in excess of an amount computed in accordance with the decision of the tax appeals tribunal which has become final; and

(c) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(d) as to any amount claimed as a result of a change or correction described in subdivision three of this section.

7. Limit on amount of credit or refund. The amount of overpayment determined under subdivision six of this section shall, when the decision of the tax appeals tribunal has become final, be credited or refunded in accordance with subdivision one of section 11-677 of this subchapter and shall not exceed the amount of tax which the tax appeals tribunal determines as part of its decision was paid:

(a) after the mailing of the notice of deficiency, or

(b) within the period which would be applicable under subdivision one, two or three of this section, if on the date of the mailing of the notice of deficiency a claim had been filed, whether or not filed, stating the ground upon which the tax appeals tribunal finds that there is an overpayment.

For special restriction on credit or refund in a proceeding on a petition for redetermination of a deficiency where the notice of deficiency is issued as a result of (i) a net operating loss carryback, or (ii) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (iii) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

8. Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be consid-

ered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

9. Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, including any amount paid by the taxpayer as estimated tax for a taxable year, shall be deemed to have been paid by it on the fifteenth day of the third month following the close of the taxable year the income of which is the basis for tax under subchapter two, three or three-A of this chapter, or on the last day prescribed in part one of subchapter three or subchapter four of this chapter for the filing of a final return for such taxable year, or portion thereof, determined in all cases without regard to any extension of time granted the taxpayer.

10. Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision two of section 11-677 of this subchapter.

11. Notice of change or correction of sales and compensating use tax liability. (a) If a taxpayer is required by subchapter two or three-A of this chapter to file a report or amended return in respect of a change or correction of its sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time such report or amended return was required to be filed with the commissioner of finance. The amount of such credit or refund shall be computed without change of the allocation of income or capital upon which the taxpayer's return, or any additional assessment, was based, and shall not exceed the amount of the reduction in tax attributable to such change or correction of sales and compensating use tax liability.

(b) This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

§ 11-679 Interest on overpayment. 1. General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of finance pursuant to section 11-687 of this subchapter, or, if no rate is set, at the rate of six percent per annum upon any overpayment in respect to the tax imposed by any of the named subchapters:

(a) from the date of the overpayment to the due date of an amount against which a credit is taken;

(b) from the date of the overpayment to a date, to be determined by the commissioner of finance, preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) Late and amended returns and claims for credit or refund. Notwithstanding paragraph (a) or (b) of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return, determined with regard to extensions, or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(d) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which

it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph (c) of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall be not construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund of an overpayment.

(e) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

2. Advance payment of tax and estimated tax. The provisions of subdivisions eight and nine of section 11-678 of this subchapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

3. Tax refund within three months of claim for overpayment. If any overpayment of tax imposed by any of the named subchapters is credited or refunded within three months after the last date prescribed, or permitted by extension of time, for filing the return of such tax on which such overpayment was claimed or within three months after such return was filed, whichever is later, or within three months after an amended return was filed claiming such overpayment or within three months after a claim for credit or refund was filed on which such overpayment was claimed, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed, or permitted by extension of time, for the filing of the return of tax for such year or period shall be considered as filed on such last day.

4. Refund of tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by subchapter two or three-A of this chapter results from a carryback of a net operating loss or a net capital loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss or net capital loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision three of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

5. No interest until return in processible form.

(a) For purposes of subdivisions one and three of this section, a return shall not be treated as filed until it is filed in processible form.

(b) For purposes of paragraph (a) of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name; address, and identifying number and the required signatures, and

(ii) sufficient required information, whether on the return or on required attachments, to permit the mathematical verification of tax liability shown on the return.

6. Cross reference. For provision with respect to interest after failure to file a report of federal or New York state change or correction or amended return under subchapter two, three or three-A, see subdivision three of section 11-678 of this subchapter.

§ 11-680 Petition to tax appeals tribunal. 1. General. The form of a petition to the tax appeals tribunal, and further proceedings before the tax appeals tribunal in any case initiated by the filing of a petition, shall be governed by such rules as the tax appeals tribunal shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. A decision of the tax appeals tribunal shall be rendered, and notice thereof shall be given, in the manner provided by section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

2. Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a taxpayer whose last known address is outside of the United States, after the mailing of the notice of deficiency authorized by section 11-672 of this subchapter, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, after ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, the taxpayer may file a petition with the tax appeals tribunal for redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision seven of section 11-678 of this subchapter. For special restriction where the notice of deficiency relates to a proposed assessment made as a result of: (a) a net operating loss carryback or a capital loss carryback, (b) an increase or decrease in federal or New York state taxable income or other basis of tax or federal or New York state tax, or (c) a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, see paragraph (g) of subdivision three of section 11-674 of this subchapter.

3. Petition for refund. A taxpayer may file a petition with the tax appeals tribunal for the amounts asserted in a claim for refund if:

(a) the taxpayer has filed a timely claim for refund with the commissioner of finance,

(b) the taxpayer has not previously filed with the tax appeals tribunal a timely petition under subdivision two of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision six of section 11-678 of this subchapter, and

(c) either: (1) six months have expired since the claim was filed, or (2) the commissioner of finance has mailed to the taxpayer, by regis-

tered or certified mail, a notice of disallowance of such claim in whole or in part.

No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the commissioner of finance. If a taxpayer files a written waiver of the requirement that the taxpayer be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) If the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title, a taxpayer which is eligible to file a petition for refund with the tax appeals tribunal pursuant to this subdivision may request a conciliation conference prior to filing such petition, provided the request is made within the time prescribed for filing the petition. Notwithstanding anything in this subdivision to the contrary, if the taxpayer has requested a conciliation conference in accordance with the procedure established pursuant to section 11-124 of this title, a petition for refund may be filed no later than ninety days from the mailing of the conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding.

4. Assertion of deficiency after filing petition.

(a) Petition for redetermination of deficiency. If a taxpayer files with the tax appeals tribunal a petition for redetermination of a deficiency, the tax appeals tribunal shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section 11-676 of this subchapter, if claim therefor is asserted at or before the hearing under rules of the tax appeals tribunal.

(b) Petition for refund. If the taxpayer files with the tax appeals tribunal a petition for credit or refund for a taxable year, the tax appeals tribunal may:

(1) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax appeals tribunal and within the period in which an assessment would be timely under section 11-674 of this subchapter, or

(2) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax appeals tribunal.

(c) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner of finance under this subdivision.

(d) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax appeals tribunal under this section, no notice of deficiency under section 11-672 of this subchapter may thereafter be issued by the commissioner of finance for the same taxable year, except in case of fraud or with respect to an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, required to be reported under subchapter two, three or three-A of this chapter or with respect to a state change or correction of sales

and compensating use tax liability required to be reported under subchapter two or three-A of this chapter.

5. Burden of proof. In any case before the tax appeals tribunal under this subchapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner of finance:

(a) whether the petitioner has been guilty of fraud with intent to evade tax;

(b) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(c) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of an increase or decrease in federal or New York state taxable income, alternative minimum taxable income or other basis of tax or federal or New York state tax or a federal or New York state change or correction or renegotiation, or computation or recomputation of tax, which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, required to be reported under subchapter two, three or three-A of this chapter, and of which increase, decrease, change or correction or renegotiation, or computation or recomputation, the commissioner of finance had no notice at the time he or she mailed the notice of deficiency or unless such increase in deficiency is the result of a change or correction of sales and compensating use tax liability required to be reported under subchapter two or three-A of this chapter, and of which change or correction the commissioner of finance had no notice at the time he or she mailed the notice of deficiency; and

(d) whether any person is liable for a penalty under subdivision twelve of section 11-676 of this subchapter.

6. Evidence of related federal or state determination. Evidence of a federal or state determination relating to issues raised in a case before the tax appeals tribunal under this section shall be admissible, under rules established by the tax appeals tribunal.

7. Jurisdiction over other years. The tax appeals tribunal shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 11-681 Review of tax appeals tribunal's decision. 1. General. A decision of the tax appeals tribunal sitting en banc shall be subject to judicial review at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified mail, return receipt requested, to the taxpayer and the commissioner of finance.

2. Judicial review exclusive remedy. The review of a decision of the tax appeals tribunal provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by the named subchapters.

3. Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the commissioner of finance may assess a deficiency determined by the tax appeals tribunal in a decision rendered pursuant to section one hundred

seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four after the expiration of the period specified in subdivision one, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer unless the taxpayer, at or before the time the taxpayer's application for review is made, has paid the deficiency, has deposited with the commissioner of finance the amount of the deficiency, or has filed with the commissioner of finance a bond, which may be a jeopardy bond under subdivision eight of section 11-685 of this subchapter, in the amount of the portion of the deficiency, including interest and other amounts, in respect of which the application for review is made and all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state, conditioned upon the payment of the deficiency, including interest and other amounts, as finally determined and such costs and charges. If, as a result of a waiver of the restrictions on the assessment and collection of a deficiency, any part of the amount determined by the tax appeals tribunal is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

4. Credit, refund or abatement after review. If the amount of a deficiency determined by the tax appeals tribunal is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

5. Date of finality of tax appeals tribunal decision. A decision of the tax appeals tribunal shall become final upon the expiration of the period specified in subdivision one of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax appeals tribunal of a decision in accordance with the mandate of the court on review provided, however, for the purpose of making an application for review, the decision of the tax appeals tribunal shall be deemed final on the date the notice of decision is sent by certified mail to the taxpayer and the commissioner of finance.

§ 11-682 Mailing rules; holidays; miscellaneous. 1. Timely mailing. (a) If any return, declaration of estimated tax, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this subchapter or of the named subchapters is, after such period or such date, delivered by United States mail to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie

evidence that such document was delivered to the commissioner of finance, tax appeals tribunal, bureau, office, officer or person to which or to whom addressed. To the extent that the commissioner of finance or, where relevant, the tax appeals tribunal shall prescribe by regulation, certified mail may be used in lieu of registered mail under this subdivision. Except as provided in paragraph (b) of this subdivision, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulations of the commissioner of finance or, where relevant, the tax appeals tribunal.

(b) (i) Any reference in paragraph (a) of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in paragraph (a) of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner may withdraw such designation for purposes of this title. The commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in paragraph (a) of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in paragraph (a) of this subdivision to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(ii) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in paragraph (a) of this subdivision. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

2. Last known address. For purposes of this subchapter, a taxpayer's last known address shall be the address given in the last return filed

by it, unless subsequently to the filing of such return the taxpayer shall have notified the commissioner of finance of a change of address.

3. Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this subchapter or the named subchapters, including any extension of time, for performing any act falls on a Saturday, Sunday, or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

4. Certificate; unfiled return. For purposes of this subchapter and sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied.

§ 11-683 Collection, levy and liens. 1. Collection procedures. The taxes imposed by the named subchapters shall be collected by the commissioner of finance, and he or she may establish the mode or time for the collection of any amount due him or her thereunder if not otherwise specified. The commissioner of finance shall, upon request, give a receipt for any sum collected thereunder. The commissioner of finance may authorize banks or trust companies which are depositaries or financial agents of the city to receive and give a receipt for any tax imposed under the named subchapters in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

2. Notice and demand for tax. The commissioner of finance shall as soon as practicable give notice to each taxpayer liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the principal office of the taxpayer in the city or shall be sent by mail to such taxpayer's last known address. Except where the commissioner of finance determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

3. Issuance of warrant after notice and demand. If any corporation or other person liable under the named subchapters for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such corporation or other person under subdivision two of this section, the commissioner of finance may within six years after the date of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance, commanding him or her to levy upon and sell the real and personal property of such corporation or other person for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner of finance, and pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of

the warrant. If the commissioner of finance finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner of finance and upon failure or refusal to pay such tax or other amount the commissioner of finance may issue a warrant without regard to the ten-day period provided in this subdivision.

4. Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision three of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

5. Judgment. When a warrant has been filed with the county clerk the commissioner of finance shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

6. Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

7. Foreign corporations. Where a notice and demand under subdivision two of this section shall have been given to a foreign corporation or other person who is not then a resident, and it appears to the commissioner of finance that it is not practicable to find in the state property of such foreign corporation or nonresident person sufficient to pay the entire balance of tax or other amount owing by such foreign corporation or nonresidential person, the commissioner of finance may, in accordance with subdivision three of this section, issue a warrant directed to an officer or employee of the department of finance, a copy of which warrant shall be mailed by certified or registered mail to such foreign corporation or nonresident person at its last known address, subject to the rules of mailing provided in subdivision one of section 11-672 of this subchapter. Such warrant shall command the officer or employee to proceed in Richmond county, and he or she shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner of finance may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner of finance may also, in his or her discretion, designate agents or retain counsel for the purpose of collecting, outside the state, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this subchapter or under any of the named subchapters, against foreign corporations or other non-resident persons, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and

in such amount as the commissioner of finance shall deem proper and sufficient.

8. Action by city for recovery of taxes. Action may be brought by the corporation counsel of the city at the instance of the commissioner of finance to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this subchapter or under the named subchapters within six years prior to the date the action is commenced.

9. Release of lien. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as it may require, may release any property from the lien of any warrant filed under subdivision four or seven of this section for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

10. Lien from due date of return. (a) In addition to any other lien provided for in this section, each tax imposed by the named subchapters shall become a lien on the date on which the return is required to be filed, without regard to any extension of time for filing such return, except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax imposed by any of the named subchapters, or to do business in this state in a corporate or organized capacity. Each such tax shall be a lien and binding upon the real and personal property of the taxpayer, or of a transferee liable to pay the same, until the same is paid in full, except that no lien for any additional tax assessed pursuant to this subchapter shall be enforceable against property which prior to the issuance to the taxpayer of a notice of deficiency under section 11-672 of this subchapter had been transferred in good faith to a bona fide transferee for value. But the lien of each such tax shall be subject to the lien of any mortgage indebtedness existing against real property previous to the time when the tax became a lien and where such mortgage indebtedness has been incurred in good faith and was not given, directly or indirectly, to any officer or stockholder of the corporation owning such real property, whether as a purchase money mortgage or otherwise, and shall also be subject to the lien of local taxes and assessments, without regard to when the lien for such taxes and assessments may have accrued. If the return is filed and the tax shown on the report to be due is paid on or before the date on which the report is required to be filed, without regard to any extensions of time for filing such report, the lien shall not be enforceable against the interest of any purchaser or mortgagee in property which is thereafter, but prior to the issuance to the taxpayer of a notice of deficiency under section 11-672 of this subchapter transferred to a bona fide purchaser for value, or mortgaged where the mortgage indebtedness is incurred in good faith and the mortgage is not given, directly or indirectly, to any officer or stockholder of the corporation. In any action to foreclose any such mortgage, or to foreclose the lien of local taxes or assessments, to which the people of the state, or the city shall have been made a party defendant by reason of the existence of a lien for any such tax, or if no such tax was due or was a lien at the time of the commencement of such action and the filing of the notice of pendency thereof but such a tax becomes due or becomes a lien subsequent to the time of the commencement of such action and the filing of the notice of pendency thereof, such real property shall be sold and

conveyed in such action free from any such tax lien, and any such tax lien may become a lien on any surplus moneys which may result from such sale, to be determined in the proceedings for the distribution of such surplus moneys. Where title to real property passes from an individual, or from a corporation owing no tax, to another corporation which is in default for such tax, the lien herein provided shall not be enforceable except as to any equity after the prior mortgage or purchase money mortgage encumbrance.

(b) The commissioner of finance may, upon application made to the commissioner and the payment of a fee of twenty-five dollars, release any real property from the lien under this subdivision, provided payment be made to the commissioner of finance of such a sum as the commissioner of finance shall deem adequate consideration for such release, or deposit be made of such security or such bond be filed as the commissioner of finance shall deem proper to secure payment of any such tax. The application for such release shall contain an accurate description of the property to be released together with such information as the commissioner of finance may require. Such release may be recorded in any office in which conveyances of real estate are entitled to be recorded.

(c) All taxes, additions to tax, penalties and interest which have become a lien under this subdivision shall cease to be a lien after the expiration of twenty years from the date they become due and payable, except that taxes, additions to tax, penalties and interest which have become a lien under this subdivision (1) as to real estate in the hands of persons who are owners thereof who would be purchasers in good faith but for such taxes, additions to tax, penalties or interest and (2) as to the lien on real estate of mortgages held by persons who would be holders thereof in good faith but for such taxes, additions to tax, penalties or interest, as against such purchasers or holders, shall cease to be a lien after the expiration of ten years from the date they become due and payable. The limitations herein provided for shall not apply to any transfer from a corporation to a person or corporation with intent to avoid payment of any taxes, or where with like intent the transfer is made to a grantee corporation, or any subsequent grantee corporation, controlled by such grantor or which has any community of interest with it, either through stock ownership or otherwise.

§ 11-684 Transferees. 1. General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due the commissioner of finance under this subchapter or under the named subchapters, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes, in case of successive transfers, donee, heir, legatee, devisee, distributee, and successor by merger, consolidation or other reorganization.

2. Exceptions.

(a) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner of finance in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(b) If, before the expiration of the time prescribed in subdivision one or paragraph (a) of this subdivision for the assessment of the liability, the commissioner of finance and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision two of section 11-678 of this subchapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision two of section 11-678 of this subchapter on the amount of the credit or refund, the period specified in subdivision one of section 11-678 of this subchapter shall be increased by the period from the date of such expiration to the date of the agreement.

3. Period for assessment against certain transferors. For purposes of this section, if any person is deceased or is a corporation which has terminated its existence, the period of limitation for assessment against such person or corporation shall be the period that would be in effect had death or termination of existence not occurred.

4. Evidence. The commissioner of finance shall use his or her powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision five of section 11-680 of this subchapter for rule as to burden of proof.

§ 11-685 Jeopardy assessments. 1. Authority for making. If the commissioner of finance believes that the assessment or collection of a deficiency will be jeopardized by delay, the commissioner shall, notwithstanding the provisions of section 11-672 of this subchapter immediately assess such deficiency, together with all interest, penalties and additions to tax provided for by law, and notice and demand shall be made by the commissioner of finance for the payment thereof.

2. Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-672 of this subchapter, then the commissioner of finance shall mail a notice under such section within sixty days after the making of the assessment.

3. Amount assessable before decision of the tax appeals tribunal. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax appeals tribunal. The commissioner of finance may, at any time before tax appeals tribunal renders its decision, abate such assessment, or any unpaid portion thereof, to the extent that the commissioner believes the assessment to be excessive in amount. The tax appeals tribunal may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

4. Amounts assessable after decision of the tax appeals tribunal. If the jeopardy assessment is made after the decision of the tax appeals tribunal is rendered, such assessment may be made only in respect of the deficiency determined by the tax appeals tribunal in its decision.

5. Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax appeals tribunal has become final or after the taxpayer has made an application for review of the decision of the tax appeals tribunal.

6. Collection of unpaid amounts. When a petition has been filed with the tax appeals tribunal and when the amount which should have been assessed has been determined by a decision of the tax appeals tribunal which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner of finance, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-677 of this subchapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the tax appeals tribunal.

7. Abatement if jeopardy does not exist. The commissioner of finance may abate the jeopardy assessment if the commissioner finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax appeals tribunal in respect of the deficiency has been rendered or, if no petition is filed with the tax appeals tribunal, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

8. Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the commissioner of finance, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount, together with interest thereon, the collection of which is stayed at the time of which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-672 of this subchapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

9. Petition to tax appeals tribunal. If the bond is given before the taxpayer has filed its petition under section 11-680 of this subchapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment, collection

of which is stayed by the bond, as is not abated by a decision of the tax appeals tribunal which has become final. If the tax appeals tribunal determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax appeals tribunal is rendered.

10. Stay of sale of seized property pending tax appeals tribunal's decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(a) if subdivision two of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-680 of this subchapter for filing a petition with the tax appeals tribunal, and

(b) if a petition is filed with the tax appeals tribunal, whether before or after the making of such jeopardy assessment, prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision one of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner of finance determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

11. Interest. For the purpose of subdivision one of section 11-675 of this subchapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

12. Early termination of taxable year. If the commissioner of finance finds that a taxpayer designs quickly to remove its property from this state, or to conceal its property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner of finance shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner of finance made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

13. Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner of finance, as provided in subdivision twelve of this section, the commissioner of finance may reopen such taxable period each time the taxpayer is found by the commissioner of finance to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner of finance may be reopened by the taxpayer if it files with the commissioner of finance a true and accurate return under any of the named subchapters for such taxable period, together with such other information as the commissioner of finance may by regulations prescribe.

14. Furnishing of bond where taxable year is closed by the commissioner of finance. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision twelve of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner of finance, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes for prior years.

§ 11-686 Criminal penalties; cross-reference. For criminal penalties, see chapter forty of this title.

§ 11-687 General powers of the commissioner of finance. 1. General. The commissioner of finance shall administer and enforce the tax imposed by the named subchapters and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this subchapter and of the named subchapters; and the commissioner may delegate the commissioner's powers and functions under all subchapters of this chapter to one of the commissioner's deputies or to any employee or employees of his or her department.

2. Examination of books and witnesses. The commissioner of finance, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of tax liability of any corporation, shall have power to examine or to cause to have examined, by any agent or representative designated by the commissioner for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the corporation rendering the return through any officer or employee of such corporation, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons.

3. Abatement authority. The commissioner of finance, of the commissioner's own motion, may abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, if the commissioner of finance determines under uniform rules prescribed by the commissioner that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

4. Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner of finance that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this subchapter or any of the named subchapters, the commissioner of finance at anytime, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

5. (a) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-606, 11-608, 11-645, 11-647, 11-656, 11-658, 11-675, 11-676, and 11-679 of this chapter, but if no such rate or rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be

set at seven and one-half percent per annum. Such overpayment and underpayment rates shall be the rates prescribed in paragraph (b) of this subdivision but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(b) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph (c) of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph (c) of this subdivision, plus (ii) seven percentage points.

(c) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the overpayment and underpayment rates for the month of September, nineteen hundred eighty-nine.

(d) Publication of interest rates. The commissioner of finance shall cause to be published in the city record, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter relating to the definition of a rule.

(e) Cross-reference. For provisions relating to the power of the commissioner of finance to abate small amounts of interest, see subdivision three of this section.

6. In computing the amount of any interest required to be paid under this subchapter or any of the named subchapters by the commissioner of finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The preceding sentence shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision three of section 11-676 of this subchapter.

§ 11-688 Secrecy required of official; penalty for violation. 1. Except in accordance with proper judicial order or as otherwise provided

by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, the tax appeals tribunal, any commissioner or employee of such tribunal, any person who, pursuant to this section, is permitted to inspect any report or return, or to whom any information contained in any report or return is furnished, any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a report filed pursuant to this chapter, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return, under this chapter. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports or returns or of facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a copy of any report filed by it, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city of the report or return of any taxpayer which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this chapter or under any local law of the city imposed as authorized by the act authorizing the adoption of this chapter has been recommended by the commissioner of finance or the corporation counsel or has been instituted, or the inspection of the reports or returns of any taxpayer by the duly designated officers or employees of the city for purposes of an audit under this chapter or an audit authorized by the act authorizing the adoption of this chapter; and nothing in this subchapter or chapter eleven of this title shall be construed to prohibit the publication of the issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this chapter, of any corporation which may be required to be allocated within the city for purposes of the tax imposed by any of the named subchapters or chapter eleven of this title.

2. (a) Any officer or employee of the state or city who willfully violates the provisions of subdivision one of this section shall be dismissed from office and be incapable of holding any public office in the city or this state for a period of five years thereafter.

(b) Cross-reference: For criminal penalties, see chapter forty of this title.

3. Notwithstanding any provisions of this section, the commissioner of finance may permit the secretary of the treasury of the United States or his or her delegates, or the proper officer of this or any other state charged with tax administration, or the authorized representative of either such officer, to inspect the returns or reports filed under any of the named subchapters, or may furnish to such officer or his or her authorized representative an abstract of any such return or report or supply information concerning an item contained in any such return or

report, or supply him or her with information concerning an item contained in any such return or report, or disclosed by an investigation of tax liability under any of the named subchapters, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner of finance and such information is to be used for tax purposes only; and provided further the commissioner of finance may furnish to the secretary of the treasury of the United States or his or her delegates or to the tax commission of the state of New York or its delegates such returns or reports filed under any of the named subchapters and other tax information, as he or she may consider proper, for use in court actions or proceedings under the internal revenue code or the tax law of the state of New York, whether civil or criminal, where a written request therefor has been made to the commissioner of finance by the secretary of the treasury or by such tax commission or by their delegates, provided the laws of the United States or the laws of the state of New York grant substantially similar powers to the secretary of the treasury or his or her delegates or to such tax commission or its delegates. Where the commissioner of finance has so authorized use of returns, reports or other information in such actions or proceedings, officers and employees of the department of finance may testify in such actions or proceedings in respect to such returns, reports of other information.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all persons liable for any tax imposed by this chapter to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax, applications for automatic extensions of time to file reports, and reports with such banks, banking houses or trust companies as agents of the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of the city.

5. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

6. Notwithstanding anything in subdivision one of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

7. Notwithstanding anything in subdivision one of this section, the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in paragraph (n) of subdivision eight of section 11-602, paragraph (n) of subdivision eight of section 11-652 or paragraph one of subdivision (q) of section 11-641 of this chapter,

information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner of finance under this title.

§ 11-689 Disposition of revenues. All revenues resulting from the imposition of the taxes under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

§ 11-690 Inconsistencies with other laws. If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

## CHAPTER 7
## COMMERCIAL RENT OR OCCUPANCY TAX

§ 11-701 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint stock company, corporation, estate, receiver, assignee, trustee or any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Landlord." A person who grants the right to use or occupy premises to any lessee, sublessee, licensee or concessionaire, whether or not such person is the owner of the premises.

3. "Tenant." A person paying or required to pay rent for premises as a lessee, sublessee, licensee or concessionaire.

4. "Premises." Any real property or part thereof, and any structure thereon or space therein.

5. "Taxable premises." Any premises in the city occupied, used or intended to be occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity, including any premises so used even though it is used solely for the purpose of renting, or granting the right to occupy or use, the same premises in whole or in part to tenants.

6. "Rent." The consideration paid or required to be paid by a tenant for the use or occupancy of premises, valued in money, whether received in money or otherwise, including all credits and property or services of any kind and including any payment required to be made by a tenant on behalf of his or her landlord for real estate taxes, water rents or charges, sewer rents or any other expenses, including insurance, normally payable by a landlord who owns the realty other than expenses for the improvement, repair or maintenance of the tenant's premises.

7. "Base rent." The rent paid for each taxable premises by a tenant to his or her landlord for a period, less the amounts received by or due such tenant for the same period from any tenant of any part of such premises:

(i) as rent for premises which constitute taxable premises of such tenant except where such tenant is exempt from tax thereon pursuant to subdivision b or paragraph six of subdivision c of section 11-704 of this chapter; provided, however, that for tax periods beginning on and after June first, nineteen hundred eighty-five, rent received or due from a tenant exempt from tax thereon pursuant to paragraph two of subdivision b of section 11-704 of this chapter, as such paragraph two

was in effect immediately prior to its amendment by local law number fifty-seven for the year nineteen hundred ninety-three, may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred eighty-four, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after June first, nineteen hundred eighty-five, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter, as such paragraph two was in effect immediately prior to its amendment by local law number fifty-seven for the year nineteen hundred ninety-three, because of the reduction in base rent provided for in subdivision h of section 11-704 of this chapter, rent received or due from such tenant may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred eighty-five, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after June first, nineteen hundred ninety-four, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter as a result of the amendment of such paragraph two by local law number fifty-seven for the year nineteen hundred ninety-three, whether or not such exemption is due to the reduction in base rent provided for in subdivision h of section 11-704 of this chapter, rent received or due from such tenant may be deducted if such tenant occupies or uses the premises pursuant to a written agreement made prior to June first, nineteen hundred ninety-three, the terms and conditions of which have not been changed or amended; and provided, further, that for tax periods beginning on and after July twenty-ninth, nineteen hundred eighty-seven, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter because of the reduction in base rent provided for in subdivision f of section 11-704 of this chapter, rent received or due from such tenant may be deducted; and provided, further, that, notwithstanding anything in this paragraph to the contrary, for tax periods beginning on and after June first, nineteen hundred ninety-five, with respect to a tenant exempt from tax pursuant to paragraph two of subdivision b of section 11-704 of this chapter, rents received or due from such tenant may be deducted;

(ii) as rent for premises which do not constitute taxable premises and which are used by such tenant as lodging or residential premises, including such residential premises in hotels, apartment hotels or lodging houses as defined in former title V of chapter forty-six of the code of the preceding municipality;

(iii) who is exempt from tax under subdivision a of section 11-704 of this chapter;

(iv) as rent for premises which do not constitute taxable premises where such rent is, or to the extent that such rent is, deductible from the base rent of such tenant by reason of paragraph five of subdivision c of section 11-704 of this chapter; and

(v) as rent for premises which do not constitute taxable premises, pursuant to a common law relationship of landlord and tenant, notwithstanding the definition given to those terms by paragraphs two and three of this section, except where it is received as rent, whether or not such landlord-tenant relationship exists, for premises which are occupied as or constitute:

(a) a locker, safe deposit box or beach cabana;

(b) storage space in part of a warehouse or in part of any other structure or area in which goods are stored;

(c) garage space or parking space in any part of a garage, of a parking lot or of a parking area where the entire garage, entire parking lot or entire parking area accommodates more than two motor vehicles;

(d) an occupancy of a type which customarily has not been the subject of such a common law relationship of landlord and tenant. Nothing contained in this chapter shall be construed to permit a tenant to deduct the same rent from his or her base rent more than once.

8. "Premises used for railroad transportation purposes." The portion of any premises of any person actually operating a railroad, used by such person for normal or necessary railroad transportation purposes. The words normal or necessary railroad transportation purposes, as used in this definition, shall not include any activities which are normally carried on by persons not engaged in furnishing railroad transportation service such as the operation of retail stores, barber shops, restaurants, theatres, hotels, and newsstands; nor shall such words include any activities which are not deemed transportation purposes under sections four hundred eighty-nine-b and four hundred eighty-nine-m of the real property tax law.

9. "Premises used for air transportation purposes." The portion of any premises, located within an airport or within an air transportation terminal shared by more than one air line, of any person actually operating an air line as a common carrier, used by such person for normal or necessary air transportation purposes. The words normal or necessary air transportation purposes, as used in this definition, shall not include any activities which are normally carried on by persons not engaged in furnishing air transportation service such as the operation of retail stores, barber shops, restaurants, theatres, hotels and newsstands.

10. "Return." Any return filed or required to be filed as herein provided other than an information return.

11. "Tax period." The period for which any return is required to be filed under this chapter.

12. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

13. "Day." A calendar day or any part thereof.

14. "City." The city of Staten Island.

15. "Commissioner of finance." The commissioner of finance of the city.

16. "Comptroller." The comptroller of the city.

17. "Dramatic or musical arts performance." A performance or repetition thereof in a theatre, opera house or concert hall of a live dramatic performance, whether or not musical in part. The performance encompassed by this definition shall include so-called legitimate theatre plays, musical comedies and operettas. They shall not include circuses, ice skating shows or aqua shows; they shall not include performances of any kind in a roof garden, cabaret or other similar place; and they shall not include radio or television performances, whether or not such performances are prerecorded for later broadcast.

18. "Premises used for omnibus transportation purposes." The portion of any premises located within a passenger terminal of any person actually operating an omnibus line or route as a common carrier, used by such person for normal or necessary omnibus line or route transportation purposes. The words normal or necessary omnibus line or route transportation purposes, as used in this definition, shall not include any activities, which are normally carried on by persons not engaged in

furnishing omnibus line or route transportation services such as the operation of retail stores, barber shops, restaurants, theatres, hotels and newsstands.

19. "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.

20. "Premises used for retail sales purposes." Premises primarily used for the selling or otherwise disposing or furnishing of tangible goods directly to the ultimate user or consumer.

§ 11-702 Imposition of tax. a. (1) For each tax year commencing on or after June first, nineteen hundred sixty-three and ending on or before May thirty-first, nineteen hundred seventy, every tenant shall pay a tax of two and one-half per centum of his or her base rent for such tax year where his or her base rent is not in excess of twenty-five hundred dollars per year or where his or her base rent is for a period of less than one year and would not exceed twenty-five hundred dollars for a year if it were paid on an equivalent basis for an entire year or a tax of five per centum of his or her base rent for such tax year where his or her base rent is in excess of twenty-five hundred dollars per year or where his or her base rent is for a period of less than one year and would exceed twenty-five hundred dollars a year if it were paid on an equivalent basis for an entire year.

(2) For each tax year commencing on or after, June first, nineteen hundred seventy, every tenant shall pay a tax at the rates shown in the following table:

| When the annual rent is: | But not more than: | The rate shall be: |
|---|---|---|
| 0..... | $2,499 | 2 1/2% of the rent |
| $ 2,500 or over..... | $4,999 | 5% of the rent |
| $ 5,000 or over..... | $7,999 | 6 1/4% of the rent |
| $ 8,000 or over..... | $10,999 | 7% of the rent |
| $11,000 and over..... | | 7 1/2% of the rent |

For tax years embraced within the period beginning after May thirty-first, nineteen hundred seventy-seven and ending May thirty-first, nineteen hundred eighty, the tax shall be imposed at rates equal to ninety percent of the rates shown in such table.

For tax years beginning after May thirty-first, nineteen hundred eighty and ending May thirty-first, nineteen hundred eighty-one, the tax shall be imposed at rates equal to eighty-five percent of the rates shown in such table.

For tax years beginning after May thirty-first, nineteen hundred eighty-one, the tax shall be imposed at rates equal to eighty percent of the rates shown in such table.

Where the rent is for a period of less than one year, the rate shall be determined by assuming that the rent is on an equivalent basis for the entire year.

b. Nothing contained in this chapter shall be deemed to require payment of a double or multiple tax pursuant to this chapter on any part of any taxable premises.

c. Where a tenant pays an undivided rent for premises used both for residential purposes and as taxable premises, the tax shall be applicable to so much of the rent as is ascribable to the portion of such premises used as taxable premises. Where, however, the rent ascribable to so much of such premises as is used as taxable premises does not exceed fifty dollars a month, such rent shall be excluded from such tenant's base rent. Nothing contained in this subdivision shall be construed as indicating an intent to exclude any base rent from the tax imposed by

this chapter merely because it is paid as part of an undivided rent for premises which are only partially used as taxable premises.

d. The tax imposed by this chapter shall be in addition to any and all other taxes including the public housing tax imposed by chapter ten of this title.

e. Nothing contained in this section shall be construed as permitting base rent of a tenant for one taxable premises to be reduced by deducting rents received by him or her for another taxable premises of which he or she is also a tenant.

§ 11-703 Presumptions and burden of proof. a. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed it shall be presumed that all premises are taxable premises and that all rent paid or required to be paid by a tenant is base rent until the contrary is established, and the burden of proving that such presumptive base rent or any portion thereof is not included in the measure of the tax imposed by this chapter shall be on the tenant.

b. Where a tenant uses premises both for residential purposes and as taxable premises and the tenant pays an undivided rent for the premises so used, it shall be conclusively presumed against such tenant that the rent ascribable to so much of such premises as is used as taxable premises shall be the amount which such tenant deducts as rent for such premises in determining the tenant's federal income tax, as reduced by any disallowance of such deduction which is not being contested, which is fairly attributable to the tax period or tax year.

§ 11-704 Exemptions and deductions from base rent. a. The following shall be exempt from the payment of the tax imposed by this chapter:

1. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district or other political subdivision of the state;

2. The United States of America, insofar as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph;

5. Any tenant who would be subject to taxes under this chapter aggregating not more than one dollar for a tax year with respect to all taxable premises used by the tenant; and

6. Any tenant located in the "World Trade Center Area," as defined as follows: the area in the borough of Manhattan bounded by Church Street on the east starting at the intersection of Liberty Street and Church Street; running northerly along the center line of Church Street to the intersection of Church Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Broadway; running northerly along the center line of West Broadway

to the intersection of West Broadway and Barclay Street; running westerly along the center line of Barclay Street to the intersection of Barclay Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Vesey Street; running westerly along the center line of Vesey Street to the intersection of Vesey Street and West Street; running southerly along the center line of West Street to the intersection of West Street and Liberty Street; running easterly along the center line of Liberty Street to the intersection of Liberty Street and Washington Street; running southerly along the center line of Washington Street to the intersection of Washington Street and Albany Street; running easterly along the center line of Albany Street to the intersection of Albany Street and Greenwich Street; running northerly along the center line of Greenwich Street to Liberty Street; and running easterly along the center line of Liberty Street to the intersection of Liberty Street and Church Street.

b. 1. A tenant who uses premises for no more than fourteen days in a tax year whether or not consecutive, where his or her agreement with his or her landlord does not require him or her to pay rent for a longer period shall be exempt from the payment of the tax imposed by this chapter in respect to the rent paid by him or her for such premises.

2. A tenant whose base rent, (i) for tax years beginning on or after June first, nineteen hundred eighty-one and ending on or before May thirty-first, nineteen hundred eighty-four, is not in excess of four thousand nine hundred ninety-nine dollars per year, (ii) for the tax year beginning June first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, is not in excess of seven thousand nine hundred ninety-nine dollars per year, (iii) for tax years beginning on or after June first, nineteen hundred eighty-five and ending on or before May thirty-first, nineteen hundred ninety-four, is not in excess of ten thousand nine hundred ninety-nine dollars per year, (iv) for the tax year beginning June first, nineteen hundred ninety-four and ending May thirty-first, nineteen hundred ninety-five, is not in excess of twenty thousand nine hundred ninety-nine dollars per year, (v) for the tax year beginning June first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, is not in excess of thirty thousand nine hundred ninety-nine dollars per year, (vi) for the tax year beginning June first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-seven, is not in excess of thirty-nine thousand nine hundred ninety-nine dollars per year, (vii) for tax years beginning on or after June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand, is not in excess of ninety-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, (viii) for the period beginning June first, two thousand and ending November thirtieth, two thousand, is not in excess of ninety-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, (ix) for the period beginning December first, two thousand and ending May thirty-first, two thousand one, is not in excess of one hundred forty-nine thousand nine hundred ninety-nine dollars per year, calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, and (x) for tax years beginning on or after June first, two thousand one, is not in excess of two hundred forty-nine thousand nine hundred ninety-nine dollars per year, calcu-

lated without regard to any reduction in base rent allowed by paragraph two of subdivision h of this section, shall be exempt from the payment of the tax imposed by this chapter with respect to such rent, provided, however, that where the base rent of such tenant is for a period of less than one year, such base rent shall, for purposes of this paragraph, be determined as if it had been on an equivalent basis for the entire year; and provided, further, that for purposes of subparagraphs (viii) and (ix) of this paragraph, base rent for the period specified in each of such subparagraphs shall be separately annualized as if it had been on an equivalent basis for an entire year, irrespective of the actual base rent for the tax year including the period specified in such subparagraph. Provided, however, (xi) a tenant whose base rent for the tax year beginning June first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, is at least eight thousand dollars per year, but not in excess of ten thousand nine hundred ninety-nine dollars per year, shall be exempt from the payment of the tax imposed by this chapter with respect to such rent for the period beginning December first, nineteen hundred eighty-four and ending May thirty-first, nineteen hundred eighty-five, and (xii) a tenant whose base rent for the tax year beginning June first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, is at least thirty-one thousand dollars per year, but not in excess of thirty-nine thousand nine hundred ninety-nine dollars per year, shall be exempt from the payment of the tax imposed by this chapter with respect to such rent for the period beginning September first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six.

c. Base rent shall be reduced by the amount of the taxpayer's rent for, or reasonably ascribable to, the taxpayer's own use of the premises:

1. As premises used for railroad transportation purposes.

2. As premises used for air transportation purposes.

3. As piers insofar as such premises are used in interstate or foreign commerce.

4. Which are located in, upon, above or under any public street, highway or other public place, and which are defined as special franchise property in the real property tax law.

5. Which are taxed pursuant to subchapter one of chapter twenty of this title to the extent that such premises are subject to, and during the period that they are subject to, such tax.

6. Which are taxed pursuant to subdivision b or c of section 11-1005 of this title.

7. Which are advertising signs, advertising space, vending machines or newsstands within or attached to stations, platforms, stairways, entranceways, passageways, mezzanines or tracks of a rapid transit subway or elevated railroad operated by the New York city transit authority when the rent of the tenant or of the tenant's landlord is payable to such authority.

8. As premises used for omnibus transportation purposes.

9. As premises used for retail sales purposes where such premises are located in the area in the borough of Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street, connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit

Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. Any tax lot which is partly located inside such area shall be deemed to be entirely located inside such area.

d. A tenant who uses taxable premises for renting to others for residential purposes to the extent of seventy-five per centum or more of the rentable floor space shall be exempt from the tax imposed by this chapter in respect to the rent paid for such premises from the time that construction thereof commences, provided, however, that this paragraph shall not be applicable to hotels, apartment hotels or lodging houses as defined in former title V of chapter forty-six of the code of the preceding municipality.

e. (1) A tenant who uses taxable premises for a dramatic or musical arts performance for less than four weeks where there is no indication prior to or at the time that such performance commences that the performance is intended to continue for less than four weeks shall be exempt from the tax imposed by this chapter with respect to the rent paid for such taxable premises.

(2) (i) Notwithstanding any other provision of law to the contrary, a tenant who uses taxable premises for the production and performance of a theatrical work shall be exempt from the tax imposed by this chapter with respect to the rent paid for such taxable premises for a period not exceeding fifty-two weeks beginning on the date that the production of such theatrical work commences, provided, however, that this subparagraph shall not apply to any theatrical work the production of which commenced prior to June first, nineteen hundred ninety-five.

(ii) For purposes of this paragraph, the term "theatrical work" shall mean a performance or repetition thereof in a theater of a live dramatic performance, whether or not musical in part, that contains sustained plots or recognizable thematic material, including so-called legitimate theater plays or musicals, dramas, melodramas, comedies, compilations, farces or reviews, provided that such performance is intended to be open to the public for at least two weeks. The term "theatrical work" shall not include performances of any kind in a roof garden, cabaret or similar place, circuses, ice skating shows, aqua shows, variety shows, magic shows, animal acts, concerts, industrial shows or similar performances, or radio or television performances, whether or not such performances are pre-recorded for later broadcast.

f. 1. A tenant who is an eligible business and has obtained the certifications required by paragraph four of this subdivision shall be permitted to reduce his or her base rent for particular premises to which he or she has relocated by an amount determined by multiplying such base rent by a fraction the numerator of which is the number of eligible aggregate employment shares maintained by such tenant with respect to such premises in the tax year for which such tenant claims the reduction and the denominator of which is a number equal to the number of aggregate employment shares maintained by such tenant in such premises in the tax year for which such tenant claims the reduction allowed by this subdivision, provided, however, that such denominator shall not exceed the highest number of aggregate employment shares maintained by such tenant in such premises in any of the tax years described below which commence prior to or concurrently with the tax year for

which such tenant claims the reduction allowed by this subdivision: (i) the tax year during which such tenant relocates to such particular premises; and (ii) each of the three tax years immediately succeeding the tax year during which such tenant relocates to such premises. Base rent for a particular premises may be reduced as provided in this subdivision for the tax year during which the tenant relocates to such premises and for any of the twelve immediately succeeding tax years during which the tenant maintains eligible aggregate employment shares with respect to such premises, provided, however, that there shall be no such reduction with respect to base rent for any part of the tax year preceding the date of relocation to such premises, and provided, further, however, in the twelfth succeeding tax year there shall be a reduction only with respect to base rent for the period, commencing on the first day of such tax year, equal to the difference between the total number of days in the tax year of relocation and the number of days in such tax year of relocation commencing with and following the date of relocation, and provided, further, that there shall be no such reduction with respect to premises used for retail activity or hotel services.

2. (i) For purposes of this subdivision, the terms "eligible area," "eligible aggregate employment shares," "relocate," "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality, provided that whenever the term "taxable year " appears in such section 22-621, such term shall be read as "tax year," as the term "tax year" is defined in subdivision twelve of section 11-701 of this chapter except when the taxable year referred to is the taxable year immediately preceding the taxable year during which such tenant relocates.

(ii) For purposes of this subdivision, the term "eligible business" shall have the meaning ascribed by section 22-621 of the code of the preceding municipality, provided that such term shall in addition include any person subject to a tax imposed under subchapter four of chapter six of this title and any person who is an insurance corporation as defined in section one thousand five hundred of the tax law, which: (A) has been conducting substantial business operations at one or more business locations outside the eligible area for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates; and (B) on or after May twenty-seventh, nineteen hundred eighty-seven relocates all or part of such business operations; and (C) on or after May twenty-seventh, nineteen hundred eighty-seven first enters into a lease for the premises to which it relocates or a parcel on which will be constructed such premises.

3. The reduction allowed by this subdivision may be claimed on an estimated basis on the returns filed for the tax periods ending on the last days of August, November and February of each year if, and to the extent, permitted by regulations promulgated by the commissioner of finance.

4. No tenant shall be authorized to receive a reduction in base rent subject to tax under the provisions of this subdivision, until the premises with respect to which it is claiming a reduction in base rent meet the requirements in the definition of eligible premises and until it has obtained a certification of eligibility from the mayor or an agency designated by the mayor, and an annual certification from the mayor or an agency designated by the mayor as to the number of eligible aggregate employment shares maintained by such tenant which may qualify for obtaining a base rent reduction for the tenant's tax year. Any written documentation submitted to the mayor or such agency or agencies in order

to obtain any such certification shall be deemed a written instrument for purposes of section 175.00 of the penal law. Application fees for such certifications shall be determined by the mayor or such agency or agencies. No certification of eligibility shall be issued to an eligible business on or after July first, two thousand three unless such business meets the requirements of either subparagraph (a) or (b) of this paragraph:

(a) (1) prior to such date such business has purchased, leased or entered into a contract to purchase or lease particular premises or a parcel on which will be constructed such premises or already owned such premises or parcel;

(2) prior to such date improvements have been commenced on such premises or parcel which improvements will meet the requirements of subdivision (e) of section 22-621 of the code of the preceding municipality relating to expenditures for improvements;

(3) prior to such date such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such particular premises; and

(4) such business relocates to such particular premises not later than thirty-six months or, in a case in which the expenditures made for the improvements specified in clause two of this subparagraph are in excess of fifty million dollars within seventy-two months from the date of submission of such preliminary application; or

(b) (1) not later than June thirtieth, two thousand ten, such business has purchased, leased or entered into a contract to purchase or lease particular premises wholly contained in a building in which at least an aggregate of forty per centum or two hundred thousand square feet, whichever is less, of the nonresidential floor area of such building has been purchased or leased by a business or businesses which meet or will meet the requirements of subparagraph (a) of this paragraph with respect to such floor area and which are or will become certified as eligible to receive a credit under section 22-622 of the code of the preceding municipality with respect to such floor area;

(2) not later than June thirtieth, two thousand ten, such business submits a preliminary application for a certification of eligibility to such mayor or such agency or agencies with respect to a proposed relocation to such particular premises; and

(3) not later than June thirtieth, two thousand ten, such business relocates to such particular premises.

Any tenant subject to a tax imposed under chapter five, or subchapter two, three or three-A of chapter six, of this title obtaining a certification of eligibility pursuant to subdivision (b) of section 22-622 of the code of the preceding municipality shall be deemed to have obtained the certification of eligibility required by this paragraph.

g. Whenever the rent paid by a tenant for his or her occupancy of taxable premises is measured in whole or in part by the gross receipts from the tenant's sales within such place, the tenant's rent, to the extent paid on the basis of such gross receipts, shall be deemed not to exceed fifteen percent of such gross receipts.

h. (1) In the case of any taxable premises located in the borough of Manhattan north of the center line of ninety-sixth street or in the boroughs of the Bronx, Brooklyn, Queens and Staten Island, the base rent for such premises shall be reduced by ten percent for the period beginning on January first, nineteen hundred eighty-six and ending May thirty-first, nineteen hundred eighty-seven, by twenty percent for the peri-

od beginning June first, nineteen hundred eighty-seven and ending May thirty-first, nineteen hundred eighty-nine, and by thirty percent for the period beginning June first, nineteen hundred eighty-nine and ending August thirty-first, nineteen hundred ninety-five, such reduction to be made after all other exemptions and deductions authorized by this chapter have been taken. For periods beginning September first, nineteen hundred ninety-five and thereafter, a tenant of taxable premises located in that part of the city specified in this paragraph shall be exempt from the payment of the tax imposed by this chapter with respect to the rent for such taxable premises.

(2) In the case of any taxable premises located in the borough of Manhattan south of the center line of ninety-sixth street, the base rent for such premises shall be reduced by (i) fifteen percent for the period beginning March first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-six, (ii) twenty-five percent for the period beginning June first, nineteen hundred ninety-six and ending August thirty-first, nineteen hundred ninety-eight, and (iii) thirty-five percent for periods beginning September first, nineteen hundred ninety-eight and thereafter, such reduction to be made after all other exemptions and deductions authorized by this chapter have been taken.

i. (1) (a) (i) For purposes of, and to the extent relevant to, this subdivision, the following terms shall, except to the extent hereinafter modified, have the definitions assigned to such terms in section four hundred ninety-nine-a of the real property tax law, and such definitions shall apply with the same force and effect as if they had been set forth in full in this subdivision: "abatement zone," "aggregate floor area," "applicant," "department of finance," "eligible building," "eligibility period," "eligible premises," "expansion premises," "expansion tenant," "governmental agency," "landlord," "lease commencement date," "mixed-use building," "new tenant," "person," "relocation area," "renewal tenant," "rent commencement date," "subtenant" and "tenant."

(ii) For purposes of this subdivision, the definitions assigned by clause (i) of this subparagraph to the terms "eligible premises," "expansion tenant," "landlord," "new tenant" and "renewal tenant" shall be modified as follows: (A) whenever the term "eligible building" appears in any of such definitions, such term, notwithstanding anything to the contrary, shall be deemed to include an eligible government-owned building and, for purposes of subparagraph (b-2) of paragraph two of subdivision i of this section, a non-residential or mixed-use building located south of the center line of Canal Street in the borough of Manhattan, regardless of when it received its initial certificate of occupancy or initial temporary certificate of occupancy and regardless of when it was constructed and shall be deemed to include an eligible government-owned building; and (B) a reference in any of such definitions to a lease which meets the eligibility requirements of section four hundred ninety-nine-c of the real property tax law shall be deemed to include, in the case of a lease of premises in an eligible government-owned building, a lease which meets the eligibility requirements of paragraph four of this subdivision.

(b) When used in this subdivision, the following terms shall mean or include: (i) "Eligible government-owned building." A building that would be an eligible building, as such term is defined in section four hundred ninety-nine-a of the real property tax law, but for the fact that it is owned by a governmental agency.

(ii) "Eligible taxable premises." Taxable premises that are eligible premises or expansion premises.

(iii) "Eligible tenant." A tenant with respect to whose lease of eligible taxable premises there has been issued a certificate of abatement or a certificate of eligibility.

(iv) "Base year." The twelve-month period that commences on the rent commencement date.

(v) "Base rent for the base year." The total base rent for eligible taxable premises for the base year, determined without regard to the special reduction allowed by this subdivision.

(vi) "Certificate of abatement." The certificate of abatement issued pursuant to section four hundred ninety-nine-d of the real property tax law.

(vii) "Certificate of eligibility." The certificate of eligibility issued pursuant to paragraph five of this subdivision.

(2) (a) An eligible tenant of eligible taxable premises shall be allowed a special reduction in determining the taxable base rent for such eligible taxable premises. Such special reduction shall be allowed with respect to the rent for such eligible taxable premises for a period not exceeding sixty months or, with respect to a lease commencing on or after April first, nineteen hundred ninety-seven with an initial lease term of less than five years, but not less than three years, for a period not exceeding thirty-six months, commencing on the rent commencement date applicable to such eligible taxable premises, provided, however, that in no event shall any special reduction be allowed for any period beginning after March thirty-first, two thousand thirty-four. For purposes of applying such special reduction, the base rent for the base year shall, where necessary to determine the amount of the special reduction allowable with respect to any number of months falling within a tax period, be prorated by dividing the base rent for the base year by twelve and multiplying the result by such number of months.

(a-1) Notwithstanding paragraph one of this subdivision, for purposes of, and to the extent relevant to, the special reduction allowed by this subparagraph, the definitions set forth in section four hundred ninety-nine-aa of the real property tax law shall apply with the same force and effect as if they had been set forth in full in this subdivision, except as such definitions are hereinafter modified. An eligible tenant of eligible taxable premises shall be allowed a special reduction in determining the taxable base rent for such eligible taxable premises, provided, however, that (i) such eligible taxable premises are eligible premises as defined in paragraph (c) of subdivision ten of section four hundred ninety-nine-aa of the real property tax law, (ii) such eligible taxable premises are located in the special garment center district identified in the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law, (iii) the lease for such eligible taxable premises commences within the eligibility period applicable to the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law, (iv) the lease for such eligible taxable premises has an initial lease term of at least three years and (v) such special reduction is limited to the benefit period, as defined in subdivision five of section four hundred ninety-nine-aa of the real property tax law, applicable to a lease commencing on or after July first, two thousand five for eligible premises located within the abatement zone defined in paragraph (c) of subdivision two of section four hundred ninety-nine-aa of the real property tax law.

(a-2) The amount of the special reduction allowed by subparagraph (a-1) of this paragraph shall be determined as follows: (i) For the

base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first through ninth twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(a-3) When used in this subdivision, for purposes of the special reduction allowed by subparagraph (a-1) of this paragraph, the following terms shall mean or include: (i) "Eligible taxable premises." Taxable premises that are eligible premises or expansion premises.

(ii) "Eligible tenant." A tenant with respect to whose lease of eligible taxable premises there has been issued a certificate of abatement.

(iii) "Base year." The twelve-month period that commences on the rent commencement date.

(iv) "Base rent for the base year." The total base rent for eligible taxable premises for the base year, determined without the special reduction allowed by subparagraph (a-1) of this paragraph.

(v) "Certificate of abatement." The certificate of abatement issued pursuant to section four hundred ninety-nine-dd of the real property tax law.

(b) Except as provided in subparagraphs (b-1) and (b-2) of this paragraph, the amount of the special reduction allowed by this subdivision shall be determined as follows: (i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first and second twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(iii) For the third twelve-month period following the base year the amount of such special reduction shall be equal to two-thirds of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(iv) For the fourth twelve-month period following the base year the amount of such special reduction shall be equal to one-third of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(b-1) The amount of the special reduction allowed by this subdivision with respect to a lease commencing on or after April first, nineteen hundred ninety-seven with an initial lease term of less than five years, but not less than three years, shall be determined as follows: (i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first twelve-month period following the base year the amount of such special reduction shall be equal to two-thirds of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(iii) For the second twelve-month period following the base year the amount of such special reduction shall be equal to one-third of the lesser of (A) the base rent for such twelve-month period or (B) the base rent for the base year.

(b-2) The amount of the special reduction allowed by this subdivision with respect to a lease other than a sublease commencing between July first, two thousand five and June thirtieth, two thousand twenty-seven with an initial or renewal lease term of at least five years shall be

determined as follows: (i) For the base year the amount of such special reduction shall be equal to the base rent for the base year.

(ii) For the first, second, third and fourth twelve-month periods following the base year the amount of such special reduction shall be equal to the lesser of (A) the base rent for each such twelve-month period or (B) the base rent for the base year.

(c) For purposes of determining (i) whether a tenant is, pursuant to the provisions of paragraph two of subdivision b of this section, exempt from payment of the tax imposed by this chapter with respect to the base rent for eligible taxable premises or (ii) whether, and the extent to which, a tenant is eligible for the credit allowed pursuant to the provisions of section 11-704.3 of this chapter with respect to eligible taxable premises, the term "base rent" as used in such provisions shall be the base rent as determined prior to the allowance of any special reduction allowed by this subdivision.

(d) Notwithstanding anything to the contrary, for purposes of this subdivision, expansion premises shall be treated as separate and distinct from any other premises of the expansion tenant in the same eligible building.

(3) The special reduction allowed by this subdivision shall be allowed commencing on the rent commencement date; however, if the date of the certificate of abatement or certificate of eligibility is later than the rent commencement date, the tenant shall not, in the first instance, claim the special reduction on any return required to be filed for a tax period ending prior to the date of such certificate of abatement or certificate of eligibility. If the date of such certificate of abatement or certificate of eligibility falls in a tax period subsequent to the tax period in which the rent commencement date falls, but both such dates fall within the same tax year, the special reduction that was not claimed in the first instance for any period preceding the date of such certificate of abatement or certificate of eligibility shall be reflected in the final return for the tax year. If the date of the certificate of abatement or certificate of eligibility falls in the tax year following the tax year in which the rent commencement date falls, an amended final return shall be filed for such earlier tax year in which shall be reflected any special reduction allowable for such tax year; in addition, the final return for such later tax year shall reflect any special reduction that was not claimed in the first instance for any period in such tax year preceding the date of the certificate of abatement or certificate of eligibility.

(4) (a) With respect to premises located in an eligible government-owned building, no special reduction shall be allowed under this subdivision unless: (i) the landlord enters into a lease for eligible premises with a new tenant or a renewal tenant and: (A) the lease commencement date is within the eligibility period; and (B) (I) if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs fifty or fewer employees in the eligible premises, the initial lease term is for a period of at least five years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs one hundred twenty-five or fewer employees in the eligible premises, the initial lease term is for a period of at least five years, and provided, further, that with respect to a lease commencing on or after April first, nineteen hundred ninety-seven if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs one

hundred twenty-five or fewer employees in the eligible premises, the initial lease term is for a period of at least three years, or (II) if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs more than fifty employees in the eligible premises, the initial lease term is for a period of at least ten years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such new or renewal tenant employs more than one hundred twenty-five employees in the eligible premises, the initial lease term is for a period of at least ten years; or

(ii) the landlord enters into a lease with an expansion tenant for expansion premises and: (A) the lease commencement date is within the eligibility period; (B) if the expansion premises are located in the eligible building previously occupied by such expansion tenant, the lease term for the premises in the eligible building previously occupied by such expansion tenant will expire no earlier than the expiration date of the initial lease term for the expansion premises, provided that where such expansion tenant occupies premises in the eligible building under more than one lease, the provisions of this subclause shall be applied with reference to the lease for the premises containing the largest amount of square feet, provided, however, that this subclause shall not apply to a lease commencing on or after July first, nineteen hundred ninety-six; and (C) (I) if, by the sixtieth day following the rent commencement date, such expansion tenant employs fifty or fewer employees in the eligible building in which the expansion premises are located, the initial lease term for the expansion premises is for a period of at least five years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such expansion tenant employs one hundred twenty-five or fewer employees in the expansion premises, the initial lease term for the expansion premises is for a period of at least five years, and provided, further, that with respect to a lease commencing on or after April first, nineteen hundred ninety-seven if, by the sixtieth day following the rent commencement date, such expansion tenant employs one hundred twenty-five or fewer employees in the expansion premises, the initial lease term for the expansion premises is for a period of at least three years, or (II) if, by the sixtieth day following the rent commencement date, such expansion tenant employs more than fifty employees in such eligible building, the initial lease term for the expansion premises is for a period of at least ten years, provided, however, that with respect to a lease commencing on or after July first, nineteen hundred ninety-six if, by the sixtieth day following the rent commencement date, such expansion tenant employs more than one hundred twenty-five employees in the expansion premises, the initial lease term for the expansion premises is for a period of at least ten years.

(b) Notwithstanding anything in this subdivision to the contrary, with respect to premises located in an eligible government-owned building, no certificate of eligibility shall be issued and no special reduction shall be allowed under this subdivision if: (i) the tenant has relocated to such premises from any area in the borough of Manhattan north of the center line of 96th street or from any portion of the boroughs of the Bronx, Brooklyn, Queens, or Staten Island; or (ii) the lease for such premises provides that during the initial lease term required under subparagraph (a) of this paragraph either the landlord or the tenant may terminate such lease prior to the expiration of such required initial

lease term, provided that such lease may provide that either the landlord or the tenant may terminate such lease if (A) the other party is in default of any of such party's obligations under the lease, (B) the eligible premises are damaged or destroyed by fire or other casualty, (C) the eligible premises are rendered unusable for any reason not attributable to any act or failure to act of either tenant or landlord or (D) the eligible premises are acquired by eminent domain.

(c) For purposes of this paragraph, the expiration date of a lease shall be determined by the expiration date set forth in such lease, without giving effect to any rights of the landlord or the tenant to terminate such lease prior to the expiration date set forth therein.

(5) (a) (i) With respect to premises located in an eligible government-owned building, an application for a certificate of eligibility entitling a tenant to claim the special reduction allowed by this subdivision shall be filed by such tenant with the department of finance on or after the date on which the lease for the eligible premises is executed by the landlord and tenant but in no event more than one hundred eighty days following the later of the rent commencement date or the date that chapter four of the laws of nineteen hundred ninety-five became a law, and no such certificate of eligibility shall be issued unless such application is filed within such time.

(ii) Notwithstanding clause (i) of this subparagraph and any other provision of law to the contrary, with respect to a lease commencing on or after July first, nineteen hundred ninety-six in premises located in an eligible government-owned building, an application for a certificate of eligibility entitling a tenant to claim the special reduction allowed by this subdivision shall be filed by such tenant with the department of finance on or after the date on which the lease for the eligible premises is executed by the landlord and tenant but in no event more than one hundred eighty days following the rent commencement date or sixty days following the date that the chapter of the laws of nineteen hundred ninety-seven that added this clause became a law, whichever is later, and no such certificate of eligibility shall be issued unless such application is filed within such time.

(iii) Notwithstanding any other provisions of law to the contrary, an application for the special reduction allowed by subparagraph (b-2) of paragraph two of this subdivision shall be considered timely filed if filed by such tenant with the department of finance on or after the date on which the lease for the eligible premises is executed by the landlord and tenant but in no event more than one hundred eighty days following the rent commencement date or by May thirtieth, two thousand fourteen, whichever is later, and no such special reduction shall be permitted unless such application is filed within such time.

(b) In addition to any other information required by the department of finance, such application for a certificate of eligibility shall include (i) an abstract of the lease for the eligible taxable premises, which shall include the lease commencement date, the rent commencement date and the expiration date of such lease, (ii) a statement as to the number of persons employed by the tenant in the eligible taxable premises and, where applicable, in the eligible building containing such premises, by the sixtieth day following the rent commencement date, (iii) a statement as to the location of all office or retail space in the city occupied by the tenant prior to the execution of the lease for the eligible taxable premises and the commencement and expiration dates of all leases for such office or retail space located in the abatement zone. Such application shall also state that the tenant agrees to comply with and be

subject to such rules as may be issued from time to time by the department of finance.

(c) The department of finance shall issue a certificate of eligibility upon determining that an application filed pursuant to this paragraph meets the requirements set forth in this subdivision, provided, however, that no such certificate of eligibility shall be issued if any payments in lieu of taxes, water or sewer charges or other lienable charges are due and owing with respect to such eligible government-owned building at the time such application is pending, unless such payments in lieu of taxes or charges are at such time being paid in timely installments pursuant to a written agreement with the department of finance or other appropriate agency.

(d) The burden of proof shall be on the tenant to show by clear and convincing evidence that the requirements for granting a certificate of eligibility have been satisfied. The department of finance shall have the authority to require that statements in connection with applications pursuant to this paragraph be made under oath.

(e) The department of finance may provide by rule for the payment by tenants of premises in eligible government-owned buildings of reasonable administrative charges or fees necessary to defray expenses in connection with the determination of initial and continuing eligibility for the special reduction allowed by this subdivision.

(6) (a) If an eligible tenant (i) sublets any portion of the eligible taxable premises to any other person, or (ii) otherwise ceases to occupy or use any portion of the premises as eligible taxable premises, such tenant shall, immediately upon the occurrence of any such event, cease to be eligible for the special reduction allowed by this subdivision with respect to the portion of the premises which is sublet or which ceases to be occupied or used by such tenant as eligible taxable premises, and for any period following the occurrence of any such event, the special reduction otherwise allowed by this subdivision shall be reduced by an amount determined by multiplying the amount of such special reduction by the percentage of the premises which is sublet or which has ceased to be occupied or used as eligible taxable premises.

Such tenant shall give written notice of the occurrence of any such event to the department of finance within thirty days thereof. If the tenant fails to give such notice, an assessment of any additional tax that may become due as a result of the occurrence of any such event may be made at any time, notwithstanding anything in section 11-717 of this chapter to the contrary.

(b) Notwithstanding anything in this chapter to the contrary, a tenant claiming the special reduction allowed by this subdivision shall file a return for each tax period with respect to which such special reduction is claimed. Each such return shall contain a certification by the tenant, in such form as the department of finance may prescribe, to the effect that such tenant meets all the requirements of this subdivision, and no special reduction shall be allowed if such return does not contain such certification by such tenant.

(c) If any special reduction allowed under this subdivision was obtained by a tenant as a result of having made a false or misleading statement as to a material fact or having omitted to state any material fact necessary in order to make such statement not false or misleading, no such special reduction shall be allowed and any additional tax that becomes due as a result of such disallowance may be assessed at any time, notwithstanding anything in section 11-717 of this chapter to the contrary. In addition, the department of finance may declare any such

tenant to be ineligible to claim any special reduction under this subdivision in the future with respect to the same or any other premises.

7. A determination by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law to deny, terminate or revoke any abatement applied for or granted pursuant to title four of article four of the real property tax law based on the relationship between the landlord and the tenant shall not be dispositive of whether such tenant is eligible for a special reduction under this subdivision. The department of finance may determine that such tenant is eligible for a special reduction under this subdivision and may issue a certificate of eligibility to such tenant in accordance with the procedures and pursuant to the standards applicable to a tenant of premises located in an eligible government-owned building, provided, however, that any application filed pursuant to paragraph five of this subdivision by a tenant whose application for a certificate of abatement pursuant to title four of article four of the real property tax law was denied by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law based on the relationship between the landlord and the tenant, or by a tenant whose application for a certificate of abatement pursuant to title four of article four of the real property tax law was granted by the department of finance, but whose abatement was terminated or revoked by the department of finance pursuant to subdivision six of section four hundred ninety-nine-f of the real property tax law based on the relationship between the landlord and the tenant, may be deemed by the department of finance to have been filed on the date the application for such certificate of abatement was filed. This paragraph shall only apply to leases commencing on or after April first, nineteen hundred ninety-seven.

§ 11-704.2 Special credit. A tenant whose base rent for the tax year beginning June first, nineteen hundred ninety-three and ending May thirty-first, nineteen hundred ninety-four is at least eleven thousand dollars per year but not in excess of thirteen thousand nine hundred ninety-nine dollars per year shall be allowed a credit against the tax imposed by this chapter for such tax year, such credit shall be equal to twenty-five percent of the tax imposed on such base rent for such tax year. Where the base rent of a tenant is for a period of less than one year, such base rent shall, for purposes of this section, be determined as if it had been on an equivalent basis for the entire year. The credit allowed under this section shall be deducted prior to the deduction of any credit allowable under section 11-704.1 of this chapter.

§ 11-704.3 Tax credit. (a) (1) For the period beginning September first, nineteen hundred ninety-five and ending May thirty-first, nineteen hundred ninety-six, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

| If the tenant's annualized base rent for such period is: | | The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period: |
|---|---|---|
| At least: | But not over: | |
| $40,000 | $44,999 | 80% |
| $45,000 | $49,999 | 60% |
| $50,000 | $54,999 | 40% |
| $55,000 | $59,999 | 20% |

If the tenant's annualized base rent for such period is over fifty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph.

(2) For the tax year beginning June first, nineteen hundred ninety-six and ending May thirty-first, nineteen hundred ninety-seven, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

| If the tenant's base rent is: | | The credit shall be an amount equal to the following percentage of the tax imposed on such base rent for the tax year: |
|---|---|---|
| At least: | But not over: | |
| $40,000 | $44,999 | 80% |
| $45,000 | $49,999 | 60% |
| $50,000 | $54,999 | 40% |
| $55,000 | $59,999 | 20% |

If the tenant's base rent is over fifty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph.

(3) For each tax year beginning on or after June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

| If the tenant's base rent is: | | The credit shall be an amount equal to the following percentage of the tax imposed by this chapter for the tax year: |
|---|---|---|
| At least: | But not over: | |
| $100,000 | $109,999 | 80% |
| $110,000 | $119,999 | 60% |
| $120,000 | $129,999 | 40% |
| $130,000 | $139,999 | 20% |

If the tenant's base rent is over one hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, 'base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(4) For the period beginning June first, two thousand and ending November thirtieth, two thousand, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

| If the tenant's annualized base rent for such period is: | | The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period: |
|---|---|---|
| At least: | But not over: | |
| $100,000 | $109,999 | 80% |
| $110,000 | $119,999 | 60% |
| $120,000 | $129,999 | 40% |
| $130,000 | $139,999 | 20% |

If the tenant's annualized base rent for such period is over one hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph 'base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(5) For the period beginning December first, two thousand and ending May thirty-first, two thousand one, a credit shall be allowed against the tax imposed by this chapter, such credit to be determined in accordance with the following table:

| If the tenant's annualized base rent for such period is: | | The credit shall be an amount equal to the following percentage of the tax imposed on such annualized base rent for such period: |
|---|---|---|
| At least: | But not over: | |
| $150,000 | $159,999 | 80% |
| $160,000 | $169,999 | 60% |
| $170,000 | $179,999 | 40% |
| $180,000 | $189,999 | 20% |

If the tenant's annualized base rent for such period is over one hundred eighty-nine thousand nine hundred ninety-nine dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, 'base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(6) For each tax year beginning on or after June first, two thousand one, a credit shall be allowed against the tax imposed by this chapter as follows: a tenant whose base rent is at least two hundred and fifty thousand dollars but not more than three hundred thousand dollars shall be allowed a credit in an amount determined by multiplying three and nine-tenths percent of base rent by a fraction the numerator of which is three hundred thousand dollars minus the amount of base rent and the denominator of which is fifty thousand dollars. If the tenant's base rent is over three hundred thousand dollars, no credit shall be allowed under this paragraph. For purposes of this paragraph, 'base rent' shall be calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

(b) (1) Where the base rent of a tenant is for a period of less than one year, such base rent shall, for purposes of this section, be determined as if it had been on an equivalent basis for the entire year. The credits allowed under this section shall be deducted prior to the deduction of any credit allowable under section 11-704.1 of this chapter.

(2) For purposes of paragraphs four and five of subdivision (a) of this section, base rent for the period specified in each of such paragraphs shall be separately annualized as if it had been on an equivalent basis for an entire year, irrespective of the actual base rent for the tax year including the period specified in such paragraph.

§ 11-704.4. Small business tax credit. a. As used in this section, the following terms have the following meanings:

1. Income factor. The term "income factor" shall mean:

(i) for a tenant with total income of not more than five million dollars, one;

(ii) for a tenant with total income of more than five million dollars but not more than ten million dollars, a fraction the numerator of which is ten million dollars minus the amount of total income and the denominator of which is five million dollars; and

(iii) for a tenant with total income of more than ten million dollars, zero.

2. Rent factor. The term "rent factor" shall mean:

(i) for a tenant whose small business tax credit base rent is less than five hundred thousand dollars, one; and

(ii) for a tenant whose small business tax credit base rent is at least five hundred thousand dollars but not more than five hundred fifty thousand dollars, a fraction the numerator of which is five hundred fifty thousand dollars minus the amount of small business tax credit base rent and the denominator of which is fifty thousand dollars.

3. Small business tax credit base rent. The term "small business tax credit base rent" shall mean the base rent calculated without regard to any reduction in base rent allowed by paragraph two of subdivision h of section 11-704 of this chapter.

4. Total income. The term "total income" shall mean the amount reported by a person, as defined by section seven thousand seven hundred one of the internal revenue code, to the internal revenue service for the purpose of the federal income tax in the tax year immediately preceding the period for which the tenant is applying for the credit set forth in subdivision b that is equal to the gross receipts or sales of the person minus any returns and allowances, minus the cost of goods sold plus the amount of any dividends, interest, gross rents, gross royalties, capital gain net income, net gain or loss from the sale of business property, net farm profit or loss, ordinary income or loss from other partnerships, estates or trusts or other income or loss; except that, if the tenant is a limited liability company or other business entity that is not separate from its owner for federal income tax purposes under section 301.7701-2(c)(2) of title 26 of the code of federal regulations, total income as defined in this section shall mean the total income of the person that reports the activities of the tenant as its sole owner for federal income tax purposes.

b. Beginning on June first, two thousand eighteen and for each tax year beginning thereafter, a credit shall be allowed against the tax imposed by this chapter as follows: a tenant whose small business tax credit base rent is at least two hundred fifty thousand dollars but not more than five hundred fifty thousand dollars shall be allowed a credit in the amount determined by multiplying the tax imposed on the tenant pursuant to section 11-702 of this chapter minus any allowable credits or exemptions set forth outside this section by the income factor and by the rent factor. If the tenant's small business tax credit base rent is over five hundred fifty thousand dollars, no credit shall be allowed under this section.

c. The department of finance may promulgate any rules necessary to implement the provisions of this section, including, but not limited to, rules that prevent abuse of this section by related parties.

§ 11-705 Returns. a. Every tenant subject to tax under this chapter shall file with the commissioner of finance a return with respect to the taxes payable for the three month periods ending on the last days of August, November and February of each year and a final return with respect to the taxes payable for the tax year ending on the last day of May of each year. Such returns shall be filed within twenty days from the expiration of the period covered thereby. A tenant who is exempt

from the tax by reason of paragraph two of subdivision b of section 11-704 of this chapter shall nevertheless be required to file a final return, provided, however, that for tax years beginning on or after June first, nineteen hundred ninety-five and ending on or before May thirty-first, nineteen hundred ninety-seven, no such final return shall be required from such exempt tenant with respect to taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed fifteen thousand dollars for the tax year and (2) in the case of a tenant who has more than one taxable premises, the aggregate rents for all such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, do not exceed fifteen thousand dollars for the tax year. For tax years beginning on June first, nineteen hundred ninety-seven and ending on or before May thirty-first, two thousand one, no such final return shall be required from such exempt tenant with respect to any taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed seventy-five thousand dollars for the tax year and (2) the amount of rent received or due from any subtenant of such exempt tenant with respect to such premises does not exceed seventy-five thousand dollars for the tax year. For tax years beginning on or after June first, two thousand one, no such final return shall be required from such exempt tenant with respect to any taxable premises if (1) the tenant's rent for such premises, determined without regard to any deduction from or reduction in rent or base rent allowed by this chapter, does not exceed two hundred thousand dollars for the tax year and (2) the amount of rent received or due from any subtenant of such exempt tenant with respect to such premises does not exceed two hundred thousand dollars for the tax year. Notwithstanding anything in this subdivision to the contrary, for tax periods beginning on or after September first, nineteen hundred ninety-five, no return shall be required pursuant to this subdivision with respect to any taxable premises located in that part of the city specified in paragraph one of subdivision h of section 11-704 of this chapter, and no such taxable premises shall be taken into account for purposes of clause two of this subparagraph. The commissioner of finance may permit or require returns, including final returns, to be made for other periods and upon such dates as the commissioner may specify and if he or she deems it necessary, in order to insure the payment of the tax imposed by this chapter, the commissioner may require such returns to be made for shorter periods than those prescribed by this subdivision of this section, and upon such dates as he or she may specify.

b. The commissioner of finance may by regulation require the filing of information returns and supplemental information returns by landlords and by tenants of taxable premises, whether or not they are required to pay the tax imposed by this chapter, upon such dates or at such times as the commissioner may specify if he or she deems the filing of such information returns necessary for proper administration of this chapter.

c. The form of returns and information returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns or amended information returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return or information return is not filed, or if a return of any kind when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§ 11-706 Payment of tax. a. The tax imposed by this chapter shall be due and payable on or before the twentieth day of the calendar month following the end of each tax period and shall be paid to the commissioner of finance, as follows: The tax to be paid at such time shall be based on the base rent for such tax period and the rate of tax shall be the one which would be applicable if the base rent for such period were the same for each tax period during the tax year, except that the payment required to be made together with the final return or at the time that the final return should be filed shall be the amount by which the actual tax for the tax year exceeds the amounts previously paid for the tax year.

b. Where the final return shows that the amount of tax paid for the tax year exceeds the actual tax for such year, the commissioner of finance shall make the appropriate refund as promptly as possible, provided, however, that where the commissioner of finance has reason to believe that the final return is inaccurate, the commissioner may withhold the refund in whole or in part. The making of a refund pursuant to this subdivision shall not prevent the commissioner of finance from making a determination that additional tax is due or from pursuing any other method to recover the full amount of the actual tax due for the tax year.

c. Where a tenant ceases to do business the tax, as measured by the tenant's base rent for the prior part of the tax year, shall be due immediately, and the tenant shall file a final return, but, should the tenant continue to pay rent for the taxable premises, the tenant shall file the normally required returns and a final return for the tax year, provided, however, that any such tax payment shall be applied in reduction of the tax payments required to be made with such returns or with the final return for such tax year.

§ 11-707 Records to be kept. Every landlord of taxable premises and every tenant of taxable premises shall keep records of rent paid and received by him or her in such form as the commissioner of finance may by regulation require, all leases or agreements which fix the rents or rights of tenants of taxable premises, and such other records, receipts and other papers relevant to the ascertainment of the tax due under this chapter as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner of finance. Such records, unless the commissioner of finance consents to a sooner destruction or requires that they be kept for a longer time, shall be preserved for a period of three years except that leases or agreements which fix the rents or rights of a tenant shall be kept for a period of three years after the expiration of the tenancy thereunder.

§ 11-708 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has

established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of the commissioner's own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with interest and penalties thereon, if any, shall be first deposited and there is filed an undertaking with the commissioner of finance, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the taxpayer such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

§ 11-709 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner of finance for such refund shall be made within eighteen months from the date fixed by this chapter for filing the return on which such payment was based or within six months of the payment thereof, whichever of such periods expire the later. Whenever a refund or credit is made or denied, the commissioner of finance shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a

conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing of any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to section one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner of finance, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-708 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-708 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional, or otherwise improper, by the tax appeals tribunal after a hearing, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-710 Remedies exclusive. The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assess-

ment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-708 of this chapter.

§ 11-711 Reserves. In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-712 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the sheriff shall be entitled to the same fees which the sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary

course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the opening paragraph of this subdivision, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of former section forty-four of the personal property law, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-713 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding ninety days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state on New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person;

4. To delegate the commissioner's functions pursuant to this section to a deputy commissioner of finance or other employee or employees of the commissioner's department;

5. To assess, determine, revise and adjust the taxes imposed under this chapter;

6. To require any tenant who uses premises for both residential purposes and as taxable premises and who pays an undivided rent for the entire premises so used to provide the commissioner with a signed and notarized request to the United States director of internal revenue for photostatic copies of the tenant's income tax return for any year when the commissioner deems such income tax return necessary to determine the rent ascribable to so much of such premises as is used as taxable premises; and, if the tenant refuses to provide the commissioner with such a signed written request, to treat the rent for the entire premises as the rent for so much as is used as taxable premises;

7. To prescribe methods for determining how much of any tenant's base rent is ascribable to a use which results in a reduction of the base rent or for determining any other division of rent or of use of premises necessary for the determination of the base rent or the amount of base rent subject to tax under this chapter;

8. To authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner of finance may prescribe; and the commissioner of finance shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner of finance.

§ 11-714 Administration of oaths and compelling testimony. a. The commissioner of finance, the commissioner's employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4002 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and the sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-715 Interest and penalties. (a) Interest on underpayment; quarterly return. If any amount of tax required to be paid together with a return, other than the final return for a tax year, is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (h) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date until twenty days after the end of the tax year during which such payments were due or until such prior time as the tax paid for the tax year equals seventy-five percent of the full tax required to be paid for the tax year. Such interest shall be paid with the final return for the tax year to which it relates. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) Interest on underpayment; final return. If any amount of tax required to be paid together with the final return for a tax year is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (h) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(c) (1) Failure to file final return. (A) In case of failure to file a final return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate, and, in addition thereto, where a tenant, with respect to any taxable premises, is exempt from tax by reason of paragraph two of subdivision b of section 11-704 of this chapter, there shall be imposed a penalty of one hundred dollars.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on final return. In case of failure to pay the amount shown as tax on a final return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall

be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on final return. In case of failure to pay any amount in respect of any tax required to be shown on a final return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-708 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any final return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both such paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any final return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(d) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (b) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(e) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (b) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (c) or (d) of this section.

(f) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(g) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(h) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivisions (a) and (b) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the same for each subdivision and shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(i) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(j) Substantial understatement of liability. If there is a substantial understatement of tax for any tax year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any tax year if the amount of the understatement for the tax year exceeds the greater of ten percent of the tax required to be shown on the final return for the tax year or five thousand dollars. For purposes of this subdivision, the term "understatement" means the excess of the amount of the tax required to be shown on the final return for the tax year, over the amount of the tax imposed which is shown on the return, reduced by any rebate. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(k) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph one of this subdivision, the term "procures" includes ordering, or otherwise causing, a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person, whether or not a director, officer, employee, or agent of the taxpayer

involved, over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph one of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

§ 11-716 Returns to be secret. a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the department of finance of the city, any officer or employee of the department of finance of the city, any person engaged or retained by such department on an independent contract basis, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner any information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the courts may require the production of, and may admit in evidence so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing in this subdivision shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his or her tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, the state of New York or any department thereof, any agency or any department of the city of Staten Island provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of the county of Richmond; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be author-

ized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-717 Notices and limitation of time. a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or if no return has been filed or application made, then to such address as may be obtainable. The mailing of a notice as in this paragraph provided for shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the final return for the tax year to which the assessment relates; provided, however, that where no return has been made as provided by law, the tax may be assessed at any time.

c. Where before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registra-

tion shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of this subdivision with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals

tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-718 Construction and enforcement. This chapter shall be construed in conformity with chapter two hundred fifty-seven of the laws of nineteen hundred sixty-three, pursuant to which it is enacted.

§ 11-719 Annual report. a. No later than September first, two thousand twenty-five, and every September first thereafter, the department of finance shall submit to the mayor and speaker of the council, and make publicly available online, a report on the commercial rent tax. Such report shall include the following information for the prior commercial rent tax period, on the condition that any category that only includes one taxpayer shall not be reported for any tax period:

1. the distribution of taxable premises and taxpayers by base rent range, including the number and zip codes of the taxable premises for which the commercial rent tax was collected, the number of taxpayers who paid the tax, the number of taxpayers who paid the tax on more than one property and the total amount of commercial rent tax paid for the set of taxable premises and taxpayers within each range;

2. the distribution of taxable premises and taxpayers by industry, including the number and zip codes of the taxable premises for which the commercial rent tax was collected, the number of taxpayers who paid the tax, the number of taxpayers who paid the tax on more than one property and the total amount of commercial rent tax paid for the set of taxable premises and taxpayers within each industry;

3. the total amount of tax collected and the average tax liability per premises for each of the prior ten tax years;

4. the total amount of tax collected and the average tax liability per taxpayer for each of the prior ten tax years;

5. a comparison of the total commercial rent tax collected to the average market value of commercial properties in the city of Staten Island as determined by the department for each of the prior ten tax years;

6. the number of taxable premises and the number of taxpayers by base rent range and industry who received the credit set forth in section 11-704.4 of this chapter; and

7. any other information deemed relevant for inclusion by the department.

b. For purposes of the report required by subdivision a of this section, the base rent ranges shall be:

1. between $250,000 and $274,999;
2. between $275,000 and $299,999;
3. between $300,000 and $349,999;
4. between $350,000 and $399,999;
5. between $400,000 and $449,999;
6. between $450,000 and $499,999;
7. between $500,000 and $549,999;
8. between $550,000 and $599,999;
9. between $600,000 and $699,999;
10. between $700,000 and $799,999;
11. between $800,000 and $899,999;
12. between $900,000 and $999,999;
13. between $1,000,000 and $1,999,999;
14. between $2,000,000 and $2,999,999;
15. between $3,000,000 and $3,999,999;
16. between $4,000,000 and $4,999,999;
17. between $5,000,000 and $9,999,999; and

18. more than $10,000,000.

## CHAPTER 8
## TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES FOR TRANSPORTATION OF PASSENGERS

§ 11-801 Definitions. When used in this chapter, the following terms shall mean or include:

1. "Person." An individual, partnership, corporation, joint-stock company, society, association, receiver, lessee, trustee, estate, referee, assignee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Motor vehicle." Any vehicle operated upon a public highway or public street propelled by any power other than muscular power.

3. "Commercial motor vehicle." (a) Each truck, tractor, trailer or semi-trailer, and any other motor vehicle constructed or specially equipped for the transportation of goods, wares and merchandise which is commonly known as an auto truck or light delivery car;

(b) Any traction engine, road roller, tractor crane, truck crane, power shovel, road building machine, snow plow, road sweeper, sand spreader, well driller, or well servicing rig; and

(c) Any earth moving equipment as defined in the vehicle and traffic law; provided that such motor vehicles are used principally in the city or used principally in connection with a business carried on within the city.

4. "Motor vehicle for transportation of passengers." (a) Any motor vehicle licensed as a taxicab or as a coach, or any motor vehicle, not so licensed, which carries passengers for compensation, including limousine service, whether the compensation paid by or on behalf of the passenger is based on mileage, trip, time consumed or any other basis; and

(b) Any omnibus, except one operated pursuant to a franchise when, under such franchise or under a contract, relating to transportation to or from airports, with the port of New York authority, the holder of the franchise pays to the city or to the port of New York authority a percentage of its gross earnings or gross receipts or one used exclusively in interstate commerce; provided such motor vehicles, as defined in paragraph (a) or (b) of this subdivision, are used regularly, even though not principally, in the city; and further provided that this definition shall not be deemed to include any motor vehicle used principally for the transportation of children to and from schools and day camps operated by non-profit agencies as defined in subdivision four of section 11-803 of this chapter, any motor vehicle used exclusively for transportation of persons in connection with funerals or any motor vehicle for transportation of passengers where neither the owner of such motor vehicle nor any person or business engaged in transporting passengers by motor vehicle for-hire that is affiliated with such owner has a place of business in such city, a telephone number in such city, or solicits business or specifically advertises in such city.

5. "Owner." Any person owning a commercial motor vehicle or a motor vehicle for the transportation of passengers and shall include a purchaser under a reserve title contract, conditional sales agreement or vendor's lien agreement. In addition, an owner shall be deemed to include any lessee, licensee or bailee having the exclusive use of a commercial motor vehicle or a vehicle for the transportation of passengers, under a lease or otherwise, for a period of thirty days or more.

6. "Omnibus." Any motor vehicle for transportation of passengers for hire having a seating capacity of more than seven persons.

7. "Use." Any use of a motor vehicle upon the public highways or streets of the city.

8. "Maximum gross weight." The weight of the motor vehicle plus the weight of the maximum load to be carried, if any, by such vehicle.

9. "Registered owner." The person who registers a motor vehicle as owner thereof pursuant to the registration requirements of the vehicle and traffic law of the state of New York.

10. "Registration fee." The full annual fee or charge prescribed in the vehicle and traffic law of the state of New York for the registration of a motor vehicle.

11. "City." The city of Staten Island.

12. "Comptroller." The comptroller of the city.

13. "Commissioner of finance." The commissioner of finance of the city.

14. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

15. "Medallion taxicab." A motor vehicle for transportation of passengers which is duly licensed as a taxicab by the taxi and limousine commission and permitted to accept hails from passengers in the street.

16. "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.

17. "Commissioner of motor vehicles." The commissioner of motor vehicles of the state of New York.

18. "Taxi and limousine commission." The New York city taxi and limousine commission.

§ 11-802 Imposition of tax. a. In addition to any and all other taxes, including the compensating use tax, there is hereby imposed and there shall be paid annually for each tax year beginning June first, nineteen hundred sixty, a tax on the use in the city of motor vehicles to be paid by the owners of such vehicles as follows:

1. (A) For tax years ending on or before May thirty-first, nineteen hundred seventy-two, on commercial vehicles, twenty dollars for each such vehicle having a maximum gross weight of five tons or less, and thirty dollars for each such vehicle having a maximum gross weight of more than five tons, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than twenty dollars, the tax shall be an amount equal to such registration fee;

(B) For tax years beginning on and after June first, nineteen hundred seventy-two but before June first, nineteen hundred ninety, on commercial vehicles, forty dollars for each such vehicle having a maximum gross weight of five tons or less, and sixty dollars for each such vehicle having a maximum gross weight of more than five tons, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than forty dollars, the tax shall be an amount equal to such registration fee.

(C) For tax years beginning on and after June first, nineteen hundred ninety, on commercial vehicles, forty dollars for each such vehicle having a maximum gross weight of ten thousand pounds or less, two hundred dollars for each such vehicle having a maximum gross weight of more than ten thousand pounds but not more than twelve thousand five hundred pounds, two hundred seventy-five dollars for each such vehicle

having a maximum gross weight of more than twelve thousand five hundred pounds but not more than fifteen thousand pounds and three hundred dollars for each such vehicle having a maximum gross weight of more than fifteen thousand pounds, provided, however, that for each such vehicle having a registration fee prescribed in the vehicle and traffic law of the state of New York which is less than forty dollars, the tax shall be an amount equal to such registration fee.

2. (A) For tax years ending on or before May thirty-first, nineteen hundred ninety, on motor vehicles for the transportation of passengers other than medallion taxicabs, and for tax years ending on or before May thirty-first, nineteen hundred eighty-nine, on medallion taxicabs, one hundred dollars for each such vehicle.

(B) For the tax year beginning June first, nineteen hundred eighty-nine and ending May thirty-first, nineteen hundred ninety, on medallion taxicabs, five hundred dollars for each such vehicle.

(C) For tax years beginning on and after June first, nineteen hundred ninety but before May thirty-first, two thousand nineteen, on medallion taxicabs, one thousand dollars for each such vehicle, and on all other motor vehicles for transportation of passengers, four hundred dollars for each such vehicle.

(D) For tax years beginning on or after June first, two thousand nineteen, on all motor vehicles for transportation of passengers, including medallion taxicabs, four hundred dollars for each such vehicle.

b. To the extent that the tax as imposed by subdivision a of this section may be invalid solely because it is based on the use in the city of the motor vehicles, the tax shall also be deemed to be based on the privilege of using the public highways or streets of the city by such motor vehicle. Under such circumstances the rate of tax shall be the same and all other provisions of this chapter shall be equally applicable.

c. If the first use of any motor vehicle subject to the tax imposed under this chapter occurs on or after December first and before March first in any tax year, the tax for that year shall be one-half of the tax hereinabove provided; and, if the first such use occurs on or after March first in any tax year, the tax for that tax year shall be one-fourth of such tax.

d. In applying the tax on commercial motor vehicles with respect to tractors, trailers and semi-trailers, the tax shall be measured by the weight of the tractor plus the maximum gross weight of the trailer or semi-trailer with the greatest such maximum gross weight to be drawn by such tractor. No trailer or semi-trailer shall be subject to any separate or additional tax under this chapter.

§ 11-803 Exemptions. The provisions of this chapter shall not apply to motor vehicles owned and operated, or leased for their exclusive use by:

1. The state of New York, or any public corporation, including a corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district or other political subdivision of the state;

2. The United States of America;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the

benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision;

5. Any foreign nation or representative of a foreign nation with respect to motor vehicles for which they need not pay a registration fee under the provisions of the vehicle and traffic law;

6. Dealers in new and used motor vehicles where the use of the motor vehicle is confined solely to demonstrations to prospective customers or to delivery by or to the dealer and the vehicle bears dealer's license plates.

§ 11-804 Presumption and burden of proof. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all motor vehicles used in the city of the types described in paragraphs (a), (b) and (c) of subdivision three of section 11-801 of this chapter are used principally in the city or used principally in connection with a business carried on within the city and are subject to the tax until the contrary is established; and it shall be presumed that all motor vehicles used in the city of the types described in paragraphs (a) and (b) of subdivision four of section 11-801 of this chapter are used regularly, even though not principally in the city and are subject to the tax until the contrary is established. The burden of proving that a motor vehicle is not taxable under this chapter shall be on the owner of the motor vehicle.

§ 11-805 Records to be kept. Every owner of a motor vehicle subject to tax under this chapter shall keep such records of his or her vehicles and of their use in the city in such form as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

§ 11-806 Registration. a. By July thirteenth, nineteen hundred sixty or, upon acquiring any motor vehicle subject to tax hereunder after such date, within two days of such acquisition, every owner shall file with the commissioner of finance a certificate of registration in such form as prescribed by the commissioner of finance.

b. In order to determine whether motor vehicles are subject to the tax under this chapter and to facilitate administration thereof an information registration certificate in such form as is prescribed by the commissioner of finance shall be filed with the commissioner of finance by any person who owns or acquires:

1. A motor vehicle of a type described in paragraph (a), (b) or (c) of subdivision three of section 11-801 of this chapter which is registered in the city under the vehicle and traffic law or is used in the city in connection with a business carried on within the city; or

2. A motor vehicle of the type described in paragraphs (a) and (b) of subdivision four of section 11-801 of this chapter which is registered in the city under the vehicle and traffic law or is used in the city.

Such an information registration certificate shall be filed by July thirteenth, nineteen hundred sixty or, if a motor vehicle is acquired after such date, within two days after such acquisition. An information

registration certificate, however, need not be filed with respect to any motor vehicle for which a registration certificate has been filed pursuant to subdivision a of this section. The commissioner of finance may, by regulation, provide that information registration certificates need not be filed with respect to a type of motor vehicle or with respect to any general group within a type of motor vehicle.

§ 11-807 Returns. a. On or before the twentieth day of June in each year commencing with the year nineteen hundred sixty, every owner of a motor vehicle subject to tax under this chapter shall file a return with the commissioner of finance. A supplemental return shall also be filed by every owner with regard to each motor vehicle subject to tax acquired during any tax year at a time subsequent to the filing of the owner's regular return. Such supplemental return shall be filed with the commissioner of finance within a stated time, as fixed by regulation of the commissioner of finance, after the acquisition of the motor vehicle. An owner who acquires a motor vehicle subject to the tax after the commencement of a tax year and who has not filed a return or supplemental return with respect to such motor vehicle shall file a return with respect to it within two days after its acquisition by the owner.

b. The commissioner of finance, by regulation, may require that each person required under this chapter to file an information registration certificate file an information return with the commissioner of finance annually or at such other times as the commissioner deems appropriate for proper administration of this chapter. The commissioner of finance may, by regulation, provide that information returns need not be filed or that they be filed at different times with respect to a type of motor vehicle or with respect to any general group within a type of motor vehicle or with respect to any particular circumstances.

c. The commissioner of finance may permit or require returns, supplemental returns or information returns to be filed at times other than those specified in the commissioner's regulations. If the commissioner deems it necessary in order to insure payment of the tax imposed by this chapter, the commissioner of finance may require any return, supplemental return or information return to be filed with him or her at a time other than that fixed by such commissioner.

d. The form of returns, supplemental returns and information returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns, amended supplemental returns or amended information returns to be filed within twenty days after notice and to contain the information specified in the notice.

e. If a return, supplemental return or information return is not filed, or if a return of any kind when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§ 11-808 Payment of tax. a. At the time of filing a return or supplemental return the owner shall pay to the commissioner of finance the tax imposed by this chapter. Such tax shall be due and payable on the last day on which such return or supplemental return is required to be filed, regardless of whether such a return is filed or whether the return which is filed correctly indicates the amount of tax due.

b. Where an owner of a motor vehicle subject to tax under this chapter replaces it with another motor vehicle during a tax year, the owner shall be entitled, upon approval by the commissioner of finance, to have any tax paid with respect to the replaced vehicle credited toward the

tax payable with respect to the replacement vehicle for the balance of such tax year, and the owner shall pay no additional tax for such tax year with respect to it unless its nature or its maximum gross weight requires the payment of a higher amount of tax than that paid with respect to the replaced vehicle. A supplemental return, where required, shall be filed with respect to a replacement vehicle irrespective of whether additional tax is payable. Upon the grant of a waiver of tax by the commissioner of finance a purchaser of a motor vehicle subject to tax under this chapter who purchases it during a tax year from an owner who has paid the tax shall not be required to pay the tax with respect to such motor vehicle for the balance of such tax year if, and only if, the owner obtains, and submits to the commissioner of finance together with his or her return or supplemental return, a certificate or its equivalent, as prescribed by the commissioner of finance, signed by the prior owner to the effect that the prior owner has not had the tax paid credited toward any replacement vehicle and will not seek to obtain such a credit for any replacement vehicle purchased in the future. Nothing contained in this subdivision shall be deemed to authorize a refund merely because a motor vehicle with respect to which the tax has been paid is sold or otherwise disposed of during the course of the tax year.

c. Notwithstanding any other provision of law to the contrary, the tax imposed on medallion taxicabs pursuant to subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter shall be due and payable in two equal installments, the first of which shall be due and payable on or before the last day on which the return or supplemental return for the tax year is required to be filed, and the second of which shall be due and payable on or before the first day of December in such tax year; provided, however, that if a medallion taxicab is acquired subsequent to the first day of November in such tax year, the full amount of the tax imposed for the tax year shall be due and payable on or before the last day on which the supplemental return with respect to such medallion taxicab is required to be filed.

d. Notwithstanding any other provision of law to the contrary, the tax imposed on medallion taxicabs pursuant to subparagraph (B) of paragraph two of subdivision a of section 11-802 of this chapter shall, to the extent not previously paid, be due and payable on or before December first, nineteen hundred eighty-nine; provided, however, that if the tax imposed on a medallion taxicab would, but for the provisions of this subdivision, be due and payable subsequent to December first, nineteen hundred eighty-nine, the due date of such tax shall be determined without regard to this subdivision; and provided, further, that nothing in this subdivision shall be deemed to extend the date for payment of any tax imposed by paragraph two of subdivision a of section 11-802 of this chapter.

e. Notwithstanding any provision of this chapter or of chapter five of title nineteen of the code of the preceding municipality to the contrary, the taxi and limousine commission may require by rule the payment of the tax imposed on medallion taxicabs pursuant to this chapter as a condition precedent of the licensing or license renewal of such medallion taxicabs, and the taxi and limousine commission shall have the authority to deny the license or the renewal thereof for any medallion taxicab that fails to pay such tax.

§ 11-809 Stamps and other indicia of payment. a. The commissioner of finance may, by regulation, provide that the payment of the tax imposed by this chapter shall be evidenced by suitable stamps or other indicia of payment in a form prescribed by the commissioner of finance and that

every owner shall affix such stamps or other indicia of payment in the manner prescribed by regulation to each motor vehicle for which a tax had been paid, or shall otherwise keep the indicia of payment with the vehicle, readily available for inspection, in the manner prescribed by regulation. The owner or driver of the vehicle, upon demand, shall exhibit the indicia of payment to the commissioner of finance or the commissioner's duly authorized agent or employee or to any police officer of this city or state. The commissioner of finance may, by regulation, make similar provision for the use of stamps or other indicia that no tax is payable with respect to particular motor vehicles.

b. An owner who sells a motor vehicle shall not transfer any stamp or other indicia of payment to the purchaser except on a sale to a purchaser to whom the owner has properly given the certificate provided for in section 11-808 of this chapter with regard to not obtaining a credit toward any tax payable with respect to a replacement vehicle. The commissioner of finance shall, by regulation, provide for the destruction of the stamp or other indicia of payment or its return to the commissioner of finance upon all sales except where transfer to the purchaser is permitted and, where the motor vehicle sold has been replaced, for the issuance of replacement stamps or indicia of payment.

§ 11-809.1 Collection of tax by commissioner of motor vehicles. a. Notwithstanding any provision of this chapter to the contrary, the tax imposed by this chapter on any commercial motor vehicle with a maximum gross weight of ten thousand pounds or less and on any motor vehicle for transportation of passengers, other than a medallion taxicab, shall be collected by the commissioner of motor vehicles, provided that any such motor vehicle is registered or required to be registered pursuant to any provision of section four hundred one of the vehicle and traffic law.

The owner of each such motor vehicle shall pay the tax due thereon to the commissioner of motor vehicles on or before the date upon which such owner registers or renews the registration of such motor vehicle or is required to register or renew the registration thereof pursuant to section four hundred one of the vehicle and traffic law.

b. Notwithstanding any provision of section four hundred of the vehicle and traffic law to the contrary, payment of the tax with respect to a motor vehicle described in subdivision a of this section shall be a condition precedent to the registration or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable date tag in accordance with the vehicle and traffic law and the rules and regulations promulgated thereunder, and no such certificate of registration, plates or tag shall be issued unless such tax has been paid. If the registration period applicable to any such vehicle is a period of not less than two years, as a result of the application of the provisions of paragraph c of subdivision five of section four hundred one of the vehicle and traffic law, the tax required to be paid pursuant to this section shall be the annual tax specified in section 11-802 of this chapter multiplied by the number of years in the registration period. The commissioner of motor vehicles, upon payment of the tax pursuant to this section or upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a receipt for such tax and to each other taxpayer or exempt person a statement, document or other form prescribed by the commissioner of motor vehicles, showing that such tax has been paid or is not due with respect to such motor vehicle.

c. Notwithstanding the definition of the term "tax year" contained in subdivision fourteen of section 11-801 of this chapter, for purposes of

the taxes payable to the commissioner of motor vehicles pursuant to this section, "tax year" shall mean the twelve-month registration period applicable to the subject motor vehicle under the vehicle and traffic law and, in the case of a registration period of at least two years, shall mean each succeeding twelve-month period falling within such registration period.

d. Where the tax imposed by this chapter has been paid to the commissioner of finance with respect to a motor vehicle for a tax year described in subdivision fourteen of section 11-801 of this chapter, and subsequent thereto but within such tax year the same taxpayer pays a tax to the commissioner of the motor vehicles with respect to such motor vehicle pursuant to this section, such taxpayer shall be entitled to a refund or credit from the commissioner of finance for the portion of the tax paid to the commissioner of finance which is attributable to the period beginning on the first day of the first tax year, as the term "tax year" is defined in subdivision c of this section, for which the tax is paid to the commissioner of motor vehicles and ending on the following May thirty-first, provided, however, that no such refund or credit shall be allowed if the amount thereof is less than five dollars.

Any refund or credit to which a taxpayer is entitled pursuant to this subdivision shall be promptly refunded or credited, without interest, by the commissioner of finance, and the commissioner of finance may promulgate such rules as he or she deems necessary to carry out the provisions of this subdivision. Any amount for which the taxpayer is entitled to a refund or credit pursuant to this subdivision may be allowed as a credit against the tax payable to the commissioner of motor vehicles pursuant to this section to the extent and in the manner provided for in the agreement authorized by subdivision k of this section.

e. Whenever any fee or portion of a fee paid for the registration of a motor vehicle under the provisions of the vehicle and traffic law is refunded pursuant to the provisions of subdivision one or one-a of section four hundred twenty-eight thereof, the amount of any tax paid to the commissioner of motor vehicles pursuant to this section upon such registration shall also be refunded by the commissioner of motor vehicles, provided that where a fee is refunded pursuant to subdivision one-a of such section four hundred twenty-eight, the amount of tax to be refunded shall be limited to the tax paid for a tax year commencing subsequent to the end of the first twelve-month period of such registration.

f. Where the annual registration period applicable to a particular class of motor vehicle begins and ends on the same dates for all motor vehicles within such class, the tax payable to the commissioner of motor vehicles pursuant to this section with respect to a motor vehicle within such class which is registered or required to be registered after the commencement of such annual registration period shall be determined for such period as follows:

1. If such motor vehicle is registered or required to be registered before the first day of the seventh month of such period, the tax shall be the amount specified in subdivision a of section 11-802 of this chapter.

2. If such motor vehicle is registered or required to be registered on or after the first day of the seventh month of such period but before the first day of the tenth month of such period, the tax shall be one-half of the amount specified in subdivision a of section 11-802 of this chapter.

3. If such motor vehicle is registered or required to be registered on or after the first day of the tenth month of such period, the tax shall be one-fourth of the amount specified in subdivision a of section 11-802 of this chapter.

g. The provisions of subdivision b of section 11-808 of this chapter shall apply to this section with such modifications or adaptations as are necessary to carry out the purposes of this section and to ensure collection of the appropriate annual tax specified in subdivision a of section 11-802 of this chapter, and with due regard to the respective responsibilities of the commissioner of finance and the commissioner of motor vehicles under this section and to the definitions of "tax year" contained in subdivision c of this section and subdivision fourteen of section 11-801 of this chapter. The agreement between the commissioner of finance and the commissioner of motor vehicles authorized by subdivision k of this section may contain such provisions concerning the division of responsibility for collection of the taxes imposed by this chapter and the granting of refunds or credits as are consistent with this section and subdivision b of section 11-808 of this chapter, and the commissioner of finance and the commissioner of motor vehicles may also adopt such rules as they deem necessary for such purposes.

h. Notwithstanding any provision of section 11-807 of this chapter to the contrary, at the time a tax is required to be paid to the commissioner of motor vehicles pursuant to this section, the person required to pay such tax shall file a return with the commissioner of motor vehicles in such form and containing such information as he or she may prescribe. The taxpayer's application for registration or the renewal thereof shall constitute the return required under this subdivision unless the commissioner of motor vehicles shall otherwise provide by rule. A return filed pursuant to this subdivision with respect to a motor vehicle for a tax year or years shall be in lieu of any return otherwise required to be filed with respect thereto pursuant to section 11-807 of this chapter.

i. In any case in which the tax imposed by this chapter is required to be paid to the commissioner of motor vehicles but is not so paid, the commissioner of finance shall collect such tax and all of the provisions of this chapter relating to collection of taxes by the commissioner of finance shall apply with respect thereto.

j. Notwithstanding any provision of section four hundred of the vehicle and traffic law to the contrary, in those cases in which the commissioner of finance is responsible for collecting the tax imposed by this chapter, the commissioner of motor vehicles shall not issue a certificate of registration, plates or removable date tag for any motor vehicle subject to such tax with respect to which the commissioner of finance has notified the commissioner of motor vehicles that such tax has not been paid, unless the registrant submits proof, in a form approved by the commissioner of motor vehicles, that such tax has been paid, or is not due, with respect to such motor vehicle.

k. The commissioner of finance is hereby authorized and empowered to enter into an agreement with the commissioner of motor vehicles to govern the collection of the taxes imposed by this chapter which are required to be paid to the commissioner of motor vehicles pursuant to this section. Such agreement shall provide for the exclusive method of collection, custody and remittal to the commissioner of finance of the proceeds of any such tax; for the payment by the city of the reasonable expenses incurred by the department of motor vehicles in connection with the collection of any such tax; for the commissioner of finance, or a

duly designated representative, upon his or her request, not more frequently than once in each calendar year at a time agreed upon by the state comptroller, to audit the accuracy of the payments, distributions and remittances to the city; and for such other matters as may be necessary and proper to effectuate the purposes of such agreement. Such agreement shall have the force and effect of a rule or regulation of the commissioner of motor vehicles and shall be filed and published in accordance with any statutory requirements relating thereto.

l. The commissioner of motor vehicles shall promptly notify the corporation counsel of the city of any litigation instituted against such commissioner which challenges the constitutionality or validity of any provision of this chapter, or of the enabling act pursuant to which it was adopted, or which attempts to limit or question the application of either such law, and such notification shall include copies of the papers served upon such commissioner.

m. The commissioner of motor vehicles shall begin to collect taxes in accordance with the provisions of this section at such time as is specified in the agreement between the commissioner of motor vehicles and the commissioner of finance provided for in subdivision k of this section.

n. In addition to any other powers granted to the commissioner of motor vehicles in this chapter or any other law, he or she is hereby authorized and empowered: 1. to adopt and amend rules appropriate to the carrying out of his or her responsibilities under this chapter; 2. to request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles of any other state, the treasury department of the United States or the appropriate officials of any city or county of the state of New York; and to afford such information to such department of motor vehicles, treasury department or officials of such city or county, any provision of this chapter to the contrary notwithstanding; 3. to delegate his or her functions under this section to a deputy commissioner in the department of motor vehicles or any employee of such department or to any county clerk or other officer who acts as the agent of such commissioner in the registration of motor vehicles; 4. to require all persons owning motor vehicles with respect to which the tax imposed by this chapter is payable to the commissioner of motor vehicles to keep such records as he or she may prescribe and to furnish such information upon his or her request; and 5. to extend, for cause shown, the time for filing any return required to be filed with the commissioner of motor vehicles for a period not exceeding sixty days.

o. To the extent that any provision of this section is in conflict with any other provision of this chapter, the provisions of this section shall be controlling, but in all other respects such other provisions of this chapter shall remain fully applicable with respect to the imposition, administration and collection of the taxes imposed by this chapter.

§ 11-809.2 Collection of tax by the taxi and limousine commission on behalf of the commissioner of finance. a. Notwithstanding any provision of this chapter to the contrary, the tax imposed by this chapter on any designated licensed vehicle, as defined in this subdivision, shall be collected by the taxi and limousine commission on behalf of the commissioner of finance. Except as otherwise provided by subdivision m of this section, the owner of each such designated licensed vehicle shall pay the tax due thereon to the taxi and limousine commission on or before the date upon which such owner licenses or renews the license of such designated licensed vehicle or is required to license or renew the

license thereof pursuant to chapter five of title nineteen of the code of the preceding municipality. For purposes of this section, the term "designated licensed vehicle" shall mean a motor vehicle for the transportation of passengers, other than a medallion taxicab, the tax on which is not collected by the commissioner of motor vehicles pursuant to section 11-809.1 of this chapter and which is licensed or required to be licensed by the taxi and limousine commission pursuant to any provision of chapter five of title nineteen of the code of the preceding municipality.

b. Notwithstanding any provision of chapter five of title nineteen of the code of the preceding municipality to the contrary, payment of the tax with respect to a designated licensed vehicle shall be a condition precedent to the licensing or license renewal of such designated licensed vehicle with the taxi and limousine commission, and no such license or renewal thereof shall be issued unless such tax has been paid. Except as provided in subdivisions f and m of this section, if the license period applicable to any such designated licensed vehicle is a period of more than one year, the tax required to be paid pursuant to this section shall be the annual tax specified in section 11-802 of this chapter multiplied by the number of years in the license period. The taxi and limousine commission, upon payment of the tax pursuant to this section or upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a receipt for such tax and to each other taxpayer or exempt person a statement, document or other form prescribed by the taxi and limousine commission, showing that such tax has been paid or is not due with respect to such designated licensed vehicle.

c. For purposes of this section, the term "tax period" shall mean the license period applicable to the designated licensed vehicle under chapter five of title nineteen of the code of the preceding municipality and, in the case of a license period of other than one year, shall mean the number of twelve-month periods and any period of less than twelve months within such license period. The term "tax period" shall also include any periods described in subparagraph (A) of paragraph one of subdivision m of this section.

d. Except as provided in subdivision m of this section, where the tax imposed by this chapter has been paid to the commissioner of finance with respect to a motor vehicle for a tax year described in subdivision fourteen of section 11-801 of this chapter, and subsequent thereto but within such tax year the same taxpayer pays a tax to the taxi and limousine commission with respect to such motor vehicle pursuant to this section, such taxpayer shall be entitled to a refund or credit from the commissioner of finance for the portion of the tax paid to the commissioner of finance that is attributable to the period beginning on the first day of the first tax period for which the tax is paid to the taxi and limousine commission and ending on the following May thirty-first, provided, however, that no such refund or credit shall be allowed if the amount thereof is less than five dollars. Any refund or credit to which a taxpayer is entitled pursuant to this subdivision shall be promptly refunded or credited, without interest, by the commissioner of finance, and the commissioner of finance may promulgate such rules as he or she deems necessary to carry out the provisions of this subdivision.

e. If the license for the designated licensed vehicle is transferred, surrendered or terminated for reasons other than revocation, and the applicable license period under chapter five of title nineteen of the code of the preceding municipality is for more than one year, and the

tax paid to the taxi and limousine commission was for a tax period of more than twelve months, except as otherwise provided in the agreement between the taxi and limousine commission and the commissioner of finance authorized pursuant to subdivision k of this section, the commissioner of finance shall refund the tax paid for any twelve-month period commencing subsequent to the transfer, surrender or other termination of the license described in this subdivision.

f. Except as provided in subdivision m of this section, for designated licensed vehicles whose license period is a two year period that begins and ends on the same dates, the tax payable to the taxi and limousine commission pursuant to this section with respect to a designated licensed vehicle that is licensed or required to be licensed after the commencement of such license period shall be determined as follows:

1. If such designated licensed vehicle is licensed or required to be licensed before the first day of the seventh month of such period, the tax shall be the amount determined pursuant to subdivision b of this section.

2. If such designated licensed vehicle is licensed or required to be licensed on or after the first day of the seventh month of such period but before the first day of the thirteenth month of such period, the tax shall be three-fourths of the amount determined pursuant to subdivision b of this section.

3. If such designated licensed vehicle is licensed or required to be licensed on or after the first day of the thirteenth month but before the first day of the nineteenth month of such period, the tax shall be one-half of the amount determined pursuant to subdivision b of this section.

4. If such designated licensed vehicle is licensed or required to be licensed on or after the first day of the nineteenth month of such period, the tax shall be one-fourth of the amount determined pursuant to subdivision b of this section.

5. When the license period described in this section is for a period of less than two years, the commissioner of finance shall have the authority to provide by rule the amount to be payable under this subdivision.

g. The provisions of subdivision b of section 11-808 of this chapter shall apply to this section with such modifications or adaptations as are necessary to carry out the purposes of this section and to ensure collection of the appropriate annual tax specified in subdivision a of section 11-802 of this chapter, and with due regard to the respective responsibilities of the commissioner of finance and the taxi and limousine commission under this section and to the definition of "tax year" contained in subdivision fourteen of section 11-801 of this chapter and to the definition of "tax period" contained in subdivision c of this section. The agreement between the commissioner of finance and the taxi and limousine commission authorized by subdivision k of this section may contain such provisions concerning the division of responsibility for collection of the taxes imposed by this chapter and the granting of refunds or credits as are consistent with this section and subdivision b of section 11-808 of this chapter, and the commissioner of finance and the taxi and limousine commission may also adopt such rules as they deem necessary for such purposes.

h. Notwithstanding any provision of section 11-807 of this chapter to the contrary, at the time a tax is required to be paid to the taxi and limousine commission pursuant to this section, the person required to pay such tax shall file a return with the taxi and limousine commission

in such form and containing such information as the taxi and limousine commission may prescribe. The taxpayer's application for a license or the renewal thereof shall constitute the return required under this subdivision unless the taxi and limousine commission shall otherwise provide by rule. A return filed pursuant to this subdivision with respect to a designated licensed vehicle for a tax period or periods shall be in lieu of any return otherwise required to be filed with respect thereto pursuant to section 11-807 of this chapter. Unless the taxi and limousine commission otherwise requires, the filing of a return shall not be required for the tax periods described in subparagraph (A) of paragraph one of subdivision m of this section.

i. In any case in which the tax imposed by this chapter is required to be paid to the taxi and limousine commission but is not so paid, the commissioner of finance shall collect such tax and all of the provisions of this chapter relating to collection of taxes by the commissioner of finance shall apply with respect thereto.

j. Notwithstanding any provision of chapter five of title nineteen of the code of the preceding municipality to the contrary, in those cases in which the commissioner of finance is responsible for collecting the tax imposed by this chapter, the taxi and limousine commission shall not issue or renew a license for any designated licensed vehicle subject to such tax with respect to which the commissioner of finance has notified the taxi and limousine commission that such tax has not been paid, unless the applicant for such license or renewal submits proof, in a form approved by the taxi and limousine commission, that such tax has been paid, or is not due, with respect to such designated licensed vehicle.

k. The commissioner of finance is hereby authorized and empowered to enter into an agreement with the taxi and limousine commission to govern the collection of the taxes imposed by this chapter which are required to be paid to the taxi and limousine commission pursuant to this section. Such agreement may provide for the exclusive method of collection, custody and remittal to the commissioner of finance of the proceeds of any such tax; for the payment by the commissioner of finance of reasonable expenses incurred by the taxi and limousine commission in connection with the collection of any such tax; for the commissioner of finance, or a duly designated representative, upon his or her request, not more frequently than once in each calendar year at a time agreed upon by the city comptroller, to audit the accuracy of the payments, distributions and remittances to the commissioner of finance; and for such other matters as may be necessary and proper to effectuate the purposes of such agreement.

l. The taxi and limousine commission shall promptly notify the corporation counsel of the city and the commissioner of finance of any litigation instituted against such commission which challenges the constitutionality or validity of any provision of this chapter, or which attempts to limit or question the application of this chapter, and such notification shall include copies of the papers served upon such commission.

m. Except as otherwise provided in the agreement between the taxi and limousine commission and the commissioner of finance authorized by subdivision k of this section, or with respect to the periods described in paragraph two of this subdivision, the taxi and limousine commission shall begin to collect taxes in accordance with the provisions of this section on the first day of April in the year two thousand twelve as follows:

1. The tax due on a designated licensed vehicle, the license for which expires on or after the first day of June in the year two thousand twelve and before the first day of June in the year two thousand fourteen, shall be determined as follows:

(A) For a designated licensed vehicle whose license expires on or after the first day of June in the year two thousand twelve and before the first day of June in the year two thousand fourteen, the amount of tax for the tax period between the first day of June in the year two thousand twelve and the date the license shall expire for such designated licensed vehicle pursuant to chapter five of title nineteen of the code of the preceding municipality shall be the sum of (i) the annual tax specified in subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter for any twelve-month period within such tax period, and (ii) the amount determined under subparagraph (B) of this paragraph for any period of less than twelve months within such tax period. The amount of tax so determined shall be payable on or before the first day of June in the year two thousand twelve. In the event the amount of tax due and payable under this subparagraph shall not have been paid within thirty days of the first day of June in the year two thousand twelve, the taxi and limousine commission shall suspend the license for such designated licensed vehicle, and the license for any such designated licensed vehicle which has expired shall not be renewed until such time as such tax is paid.

(B) For purposes of subparagraph (A) of this paragraph, the amount of tax for a period of less than twelve months shall be determined as follows: (i) if such period is nine months or more, the amount for such period shall be the full amount of annual tax provided in subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter; (ii) if such period is more than six months but less than nine months, the amount for such period shall be three-fourths of the amount of annual tax provided in subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter; (iii) if such period is more than three months but less than six months, the amount for such period shall be one-half of the amount of annual tax provided in subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter; and (iv) if such period is less than three months, the amount for such period shall be one-fourth of the amount of annual tax provided in subparagraph (C) of paragraph two of subdivision a of section 11-802 of this chapter.

2. Upon the date for payment set forth in subparagraph (A) of paragraph one of this subdivision, the taxi and limousine commission shall require the taxpayer to provide a proof of payment of the tax to the commissioner of finance for the period beginning on the first day of June in the year two thousand eleven and ending on the thirty-first day of May in the year two thousand twelve or any part of such period for which the taxpayer was subject to the tax. In the event the taxpayer has not paid such tax to the commissioner of finance: (i) the license for any designated licensed vehicle described in subparagraph (A) of this paragraph shall not be renewed until such time as such tax, together with any applicable interest or penalties, has been paid to the commissioner of finance and (ii) if such tax remains unpaid as of the end of the thirty-day period set forth in subparagraph (A) of paragraph one of this subdivision, the license for any designated licensed vehicle described in subparagraph (A) of paragraph one of this subdivision shall be suspended until such time as such tax, together with any applicable interest or penalties, is paid to the commissioner of finance.

n. In addition to any other powers granted to the taxi and limousine commission in this chapter or any other law, the taxi and limousine commission is hereby authorized and empowered:

1. to adopt and amend rules appropriate to the carrying out of its responsibilities under this chapter;

2. to request information concerning motor vehicles and persons subject to the provisions of this chapter from the commissioner of motor vehicles, the department of motor vehicles of any other state, the treasury department of the United States or the appropriate officials of any city or county of the state of New York; and to afford such information to such department of motor vehicles, treasury department or officials of such city or county, any provision of this chapter to the contrary notwithstanding;

3. to delegate its functions under this section to any commissioner or employee of such commission;

4. to require any person who is an owner, as defined in chapter five of title nineteen of the code of the preceding municipality, of a designated licensed vehicle to keep such records as it prescribes and to furnish such information upon its request; and

5. to extend, for cause shown, the time for filing any return required to be filed with the taxi and limousine commission for a period not exceeding sixty days.

o. To the extent that any provision of this section is in conflict with any other provision of this chapter, the provisions of this section shall be controlling, but in all other respects such other provisions of this chapter shall remain fully applicable with respect to the imposition, administration and collection of the taxes imposed by this chapter.

§ 11-810 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices such as motor vehicle registration with the department of motor vehicles and/or any other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatso-

ever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-811 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied, the commissioner of finance shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing or notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as herein provided, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor

within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer, unless an undertaking shall first be filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-810 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-810 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or on the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-812 Remedies exclusive. The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-810 of this chapter.

§ 11-813 Reserves. In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-814 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or

penalties might be satisfied and that any such tax or penalty will not be paid when due, the commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgement docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the sheriff shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but such officer or employee shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the opening paragraph of this subdivision, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any

such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of former section forty-four of the personal property law, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-815 General powers of the commissioner of finance. In addition to all other powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any kind of return for a period not exceeding sixty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles and from the department of taxation and finance of the state of New York or any successor to their duties, or the treasury department of the United States relative to any person; and to afford information to such department of motor vehicles, department of taxation and finance or any successor to their duties, or to such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate the commissioner's functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To assess, reassess, determine, revise and readjust the taxes imposed under this chapter;

6. To provide methods for identifying motor vehicles not subject to or exempt from the tax imposed under this chapter;

7. To provide that a certificate of registration need not be filed with respect to any or all types of motor vehicles, or to provide that such certificate of registration with respect to any or all types of motor vehicles shall be contained on or combined with any return or supplemental return required to be filed under this chapter.

§ 11-816 Administration of oaths and compelling testimony. a. The commissioner of finance, the commissioner's employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding

in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of the code of the preceding municipality; for supplying false or fraudulent information, see section 11-4009 of the code of the preceding municipality.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal hereunder and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and the sheriff's duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-817 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the

tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-810 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both such paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disre-

gard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this subchapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a motor vehicle has not been registered, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-818 Information and records to be secret. a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the tax appeals tribunal, any other agency, officer or employee of the city, the commissioner of motor vehicles, any officer or employee of the department of motor vehicles, any agent of the commissioner of motor vehicles, or any other person who, pursuant to this section, is permitted to inspect any registration or return filed pursuant to this chapter, or to whom a copy, an abstract or portion of any registration or return filed pursuant to this chapter is furnished, or to whom any information contained in any registration or return filed pursuant to this chapter is furnished, to divulge or make known in any manner any information relating to or contained in any registration or any kind of return filed pursuant to this chapter. The officers charged with the custody of such registration and returns pertaining to the tax assessed pursuant to this chapter shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city, the commissioner of finance, the state or the commissioner of motor vehicles, in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the registration, return or facts shown therein are directly involved in such action or proceeding, in either of which events, the court may require the production of, and may admit in evidence, so much of said registration, return, or of the facts shown therein, as are pertinent to the action or proceeding and no more. The commissioner of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-810 or 11-811 of this chapter. Nothing herein shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a certified copy of any registration or return filed by such person; nor to prohibit the delivery of any original return, with any notation that the commis-

sioner of finance or the commissioner of motor vehicles may cause to be made thereon, to the person filing the return, whether such person files the return on his or her own behalf or on behalf of another, or to the person on whose behalf the return is filed; nor to prohibit the commissioner of finance from providing by rule for the display or production of any original return, as an indicium of payment of the tax imposed by this chapter; nor to prohibit the publication of statistics so classified as to prevent the identification of particular registrations and returns and the items thereof; nor to prohibit the delivery of a certified copy of any registration or return to the United States of America or any department thereof, the state of New York or any department thereof, the city of New York or any department thereof provided it is requested for official business, nor to prohibit the inspection by the corporation counsel or other legal representatives of the city, the attorney general of the state of New York or other legal representatives of the department of motor vehicles, or by the district attorney of any county within the city of the registration or return of any person who shall bring action to set aside or review any tax assessed pursuant to this section, or against whom an action or proceeding under this chapter is instituted. Returns, or reproductions thereof, pertaining to any motor vehicle registered pursuant to this section shall be preserved for three years and thereafter until the commissioner of finance or the commissioner of motor vehicles permits them to be destroyed.

b. (1) Any officer or employee of the city or the state of New York who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city or the state of New York for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-819 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the last registration of a motor vehicle filed by such person pursuant to the provisions of this chapter, or in any application made by such person, or if no such registration has been filed or application made, then to such address as may be obtainable. The mailing of a notice as in this subdivision provided for shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to

run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent registration or return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of such return; provided, however, that where no registration or no return has been made as provided by law, the tax may be assessed at any time.

c. Where before the expiration of the period prescribed in this section for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, commissioner of motor vehicles, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of this subdivision with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by rule of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery

service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-820 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter one thousand thirty-two of the laws of nineteen hundred sixty, pursuant to which it is enacted.

## CHAPTER 9
## TAX UPON FOREIGN AND ALIEN INSURERS

§ 11-901 Definitions. Wherever used in this chapter, the following words and phrases shall mean and include:

"Alien insurer." Any insurer incorporated or organized under the laws of any foreign nation, or of any province or territory not included under the definition of a foreign insurer.

"Foreign insurer." Any insurer, except a mutual insurance company taxed under the provisions of section nine thousand one hundred five of

the insurance law, incorporated or organized under the laws of any state, as herein defined, other than this state.

"Fire insurance corporation, association or individuals." Any insurer, regardless of the name, designation or authority under which it purports to act, which insures property of any kind or nature against loss or damage by fire.

"Loss or damage by fire." Loss or damage by fire, lightning, smoke or anything used to combat fire, regardless of whether such risks or the premiums therefor are stated or charged separately and apart from any other risk or premium.

"State." Any state of the United States and the District of Columbia.

"Commissioner of finance." The commissioner of finance of the city or any other officer of the city designated to perform the same functions.

"Department of finance." The department of finance of the city or any other agency or department designated to perform the same functions.

"Fire commissioner." The fire commissioner of the city.

"Comptroller." The comptroller of the city.

"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.

§ 11-902 General powers of the commissioner of finance. In addition to all other powers granted to the commissioner of finance under this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof.

2. To compromise disputed claims in connection with taxes hereby imposed.

3. To delegate his or her functions hereunder to any officer or employee of the department of finance.

4. To prescribe reasonable methods, approved by the New York state superintendent of insurance, for determining the amounts of premiums subject to the tax.

5. To require any foreign or alien insurer subject to the tax to keep detailed records of the premiums in a manner reasonably designed to show the amounts thereof subject to the tax and to furnish such information on request.

6. To assess, determine, revise and adjust the tax imposed under this chapter.

7. To audit the reports of any insurer.

8. To allow an extension of time not in excess of thirty days for filing the report and paying the tax required by this chapter, provided the taxpayer requests such extension in writing prior to the date prescribed for such filing and such payment by sections 11-904 and 11-903 of this chapter.

§ 11-903 Tax on premiums on policies of foreign and alien insurers. There shall be paid to the department of finance for the use and benefit of the fire department of the city, on or before the first day of March, in each year by every foreign and alien fire insurance corporation, association or individuals which insure property against loss or damage by fire, the sum of two percent of all gross direct premiums less return premiums which, during the year ending on the preceding thirty-first day of December, shall have been received by any such insurer for any insurance against loss or damage by fire in the city. Any such insurer which in any year shall cease or terminate doing business in the city shall pay the tax for such year within thirty days after such cessation or termination.

§ 11-904 Report of premiums by insurers. Each insurer required to pay a tax under this chapter shall, at the time such tax is paid or payable, whichever is sooner, render to the commissioner of finance a verified report setting forth such information as may be required by the commissioner for the determination of the tax and the proper administration of this chapter. The commissioner of finance shall prescribe the form and furnish the necessary forms to enable such insurers to make such reports. The commissioner or the commissioner's designated representative or the tax appeals tribunal or its designated representative shall have power to examine any such insurer under oath and to require the production by such insurer of all books and papers as the commissioner or the tax appeals tribunal may deem necessary. All expenses of collecting such tax shall be paid by the commissioner of finance from the funds received under this chapter prior to the distribution thereof as hereinafter authorized.

§ 11-905 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the underpayment rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition

for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-906 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules and regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on

the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any insurer who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the overpayment and underpayment rates of interest to be paid pursuant to subdivision (a) of this section and subdivision (a) of section 11-906 of this chapter, but if no such overpayment rate of interest are set, such rate or rates shall be deemed to be set at six percent per annum and such underpayment rate shall be deemed to be set at seven and one-half percent per annum. Such rates shall be the overpayment and underpayment rates prescribed in paragraph two of this subdivision but the underpayment rate shall not be less than seven and one-half percent per annum. Any such rates set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rates are in effect.

(2) General rule. (A) Overpayment rate. The overpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

§ 11-906 Assessment, refund, collection, review and reserves. (a) The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the commissioner of finance to levy, assess, determine or enforce the collection of tax, interest or penalty imposed by this chapter. However, except in the case of a wilfully false or fraudulent report, no assessment of additional tax, interest or penalty shall be made after the expiration of more than three years from the date of the filing of a report, provided, however, that where no report has been filed as provided by law the tax may be assessed at any time. The commissioner of finance shall refund or credit, with interest at the overpayment rate set by the commissioner of finance pursuant to subdivision (g) of section 11-905 of this chapter or, if no rate is set, at the rate of six percent per annum computed from the date of overpayment to a date, to be determined by the commissioner of finance, preceding the date of a refund check by not more than thirty days, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within six months from the payment thereof. Notice of any determination of the commissioner of finance with respect to an assessment of tax, interest or penalty or with respect to a claim for refund or any other notice, demand or request shall be given by mailing the same to the insurer to the address of its city of Staten Island office last filed with the commissioner of finance or, if there is no such office, to the address of its main office last filed with the commissioner of finance or, in the absence of any filed address, to such address as may be obtainable. The mailing of any notice, demand or request by the commissioner of finance shall be presumptive evidence of its receipt by the insurer and any period of time to be determined with reference to the giving of such notice, demand or request shall commence to run from the date of such mailing. The determination of the commissioner of finance shall finally and irrevocably fix the amount of any tax, interest or penalty due or to be refunded unless the taxpayer, within ninety days after the giving of notice of such determination, or if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hear-

ing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the taxpayer and to the commissioner of finance with reference to the amount of the tax, interest or penalty assessed or to be refunded. The decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason, by a proceeding under article seventy-eight of the civil practice law and rules if such proceeding is commenced by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. Such proceeding shall not be commenced by the taxpayer unless: (1) the amount of any tax assessed and sought to be reviewed with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the decision confirmed, the taxpayer will pay all costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, or (2) in the case of a review of a decision assessing any taxes, penalties and interest, at the option of the taxpayer, such undertaking may be in a sum sufficient to cover all of the taxes, penalties and interest assessed by such decision plus the costs and charges which may accrue against the taxpayer in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the commencement of the proceeding. No determination or proposed determination of tax, interest or penalty due or to be refunded shall be reviewed or enjoined in any manner except as set forth herein.

(b) In cases where the taxpayer has applied for a refund and has commenced a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal adverse to such taxpayer on its application for a refund, the commissioner of finance shall set up appropriate reserves to meet any decision adverse to the city.

(c) In computing the amount of interest to be paid under this section, such interest shall be compounded daily.

§ 11-907 Place of business to be reported. Every insurer, on or before the first day of March in each year, and as often in each year as such insurer shall change its principal place of business or change or terminate any office or place of business in the city, shall report in writing, to the commissioner of finance, the location of its principal place of business and any new principal place of business or of any new office or place of business in the city or of the termination of any such office or place of business. In the event of such change or termination, such report shall be made no later than fifteen days after such change or termination. Any insurer who fails or neglects to make such report within the time limited therefor shall be subject to a penalty of one hundred dollars and, in addition thereto, fifty dollars for each month or part thereof during which such report is not made. The total of such penalties shall not exceed one thousand dollars.

§ 11-908 Suits for violations. The tax provided to be paid by this chapter, and the pecuniary penalties and interest imposed therein, or

any or either of them, may be sued for and recovered, with costs of suit, in any court of record, by the commissioner of finance.

§ 11-909 Distribution of tax on policies covering property in the city of Staten Island. (a) The moneys received by the commissioner of finance as a tax on policies covering property in the city shall be disbursed by the commissioner of finance as follows:

1. Ten percent to the firemen's association of the state of New York, for the endowment, benefit and maintenance of the volunteer firemen's home at Hudson, but in no event to exceed the sum of thirty-five thousand dollars annually.

2. The balance to the general fund of the city established pursuant to section one hundred nine of the charter, except as provided in paragraph three of this subdivision.

3. a. Volunteer firemen's benevolent fund; trustee. From the balance specified in paragraph two of this subdivision, a sum, not to exceed one hundred fifty thousand dollars in any one year, shall be paid into a fund to be known as the volunteer firemen's benevolent fund, which shall be administered as provided by the fire commissioner, as trustee of such fund, for the benefit of indigent volunteer firefighters, their surviving spouses and orphans.

b. Persons entitled to benefits from fund. All funds received by the fire commissioner as trustee under this paragraph shall be expended by the fire commissioner for the relief of:

(i) all indigent volunteer firefighters who served as such for a period of five years in a duly organized volunteer fire company in the former towns of New Lots, Flatlands, Gravesend, New Utrecht and Flatbush in the county of Kings, or in the territory now included in the city of Staten Island, or in the territory now included in the borough of Queens, or in the territory now included in the borough of the Bronx, and who were honorably discharged after such five years of service, or who having been members of a duly organized volunteer fire company within any such town or territory, which company was disbanded by reason of the installation of a paid fire department, and were members of such company for at least one year prior to its disbandment;

(ii) the surviving spouses and orphans of any such volunteer firefighters.

c. Fund benefits of beneficiaries on rolls as of December thirty-first, nineteen hundred fifty-one. During the lifetime of those relief beneficiaries who appear as such as of December thirty-first, nineteen hundred fifty-one upon the records of the trustees of the exempt firemen's benevolent fund of the county of Kings, or of the trustees of the exempt firemen's benevolent fund of the borough of Queens, or of the trustees of the exempt firemen's benevolent fund of the borough of Staten Island, or of the trustees of the exempt firemen's benevolent fund of the borough of the Bronx, it shall be the duty of the fire commissioner, as such trustee, to pay to such beneficiaries from the volunteer firemen's benevolent fund referred to in subparagraph a of this paragraph, the same amounts as were being periodically paid to such beneficiaries as of June thirtieth, nineteen hundred fifty-two.

d. Fund benefits of residents of firemen's home. It shall be the duty of the fire commissioner, as such trustee, to pay from such fund referred to in subparagraph a of this paragraph, the sum of ten dollars monthly to each volunteer firefighter in residence at the volunteer firemen's home at Hudson, who qualified for entrance into such home by reason of service as a volunteer firefighter within the area now included within the boundaries of the city. No other payments shall be

made from such fund to any such volunteer firefighter while in residence at such home.

e. Eligibility of persons who applied for fund benefits after December thirty-first, nineteen hundred fifty-one, and prior to the establishment of fund. Upon the establishment of the volunteer firemen's benevolent fund referred to in subparagraph a of this paragraph, the fire commissioner or the fire commissioner's authorized subordinates shall investigate and determine the need for benefits of all persons who, after December thirty-first, nineteen hundred fifty-one and prior to the establishment of such volunteer firemen's benevolent fund, applied for benefits payable from any of the benevolent funds mentioned in subparagraph c of this paragraph, and who are receiving benefits therefrom at the time of the establishment of such fund referred to in subparagraph a of this paragraph. No such person shall be found to be in need of benefits, nor shall any such person be paid any benefits from such last-mentioned fund unless the fire commissioner or the fire commissioner's authorized subordinates shall determine that such person is indigent. In the event that any such person is thus found to be in need of benefits, the fire commissioner shall pay to such person from such last-mentioned fund, the same periodic amounts as the trustees mentioned in subparagraph c of this paragraph were paying as of June thirtieth, nineteen hundred fifty-two, to a person who had the same status and who was receiving benefits from the borough or county fund which would be currently liable for the payment of benefits to such person, but for the provision of section 13-532 of the code of the preceding municipality. It shall be the duty of the fire commissioner and the fire commissioner's authorized subordinates to maintain and carry out continuously, such investigation procedures as may be necessary to assure that benefits will not be paid from such fund to any persons who are not in need as herein specified.

f. Eligibility for benefits of persons applying therefor after establishment of fund. All persons applying after the establishment of the volunteer firemen's benevolent fund for benefits payable therefrom shall be investigated as to need by the fire commissioner or the fire commissioner's authorized subordinates, and the eligibility of such persons for benefits and the amount thereof to be awarded and paid to them shall be determined by the fire commissioner or the fire commissioner's authorized subordinates in accordance with the standards specified in subparagraph e of this paragraph. Benefits shall be paid from such fund to eligible persons in accordance with such determination and it shall be the duty of the fire commissioner and the fire commissioner's subordinates continuously to maintain and carry out as to such persons investigation procedures such as are described in subparagraph e of this paragraph. The fire commissioner, as part of his or her investigation to determine eligibility of persons for fund benefits, shall request from the duly appointed representative of the volunteer firefighters in each borough a report on such person's service and indigency. Such report shall be solely for the information of the fire commissioner and shall not be binding upon the fire commissioner in arriving at a determination as to eligibility. In the event that such report is not submitted within ten days from the date of request, the fire commissioner shall determine eligibility on the basis of the facts developed in the fire commissioner's own investigation.

g. Excess moneys. In the event that the benefits paid by the fire commissioner, as trustee, during any period of one year beginning on the first day of February shall not equal the sum of one hundred fifty thou-

sand dollars, the unexpended balance shall be paid into the general fund of the city established pursuant to section one hundred nine of the charter, except that the fire commissioner may retain in the volunteer firemen's benevolent fund such amount as may be necessary to meet the commitments of such fund until the revenue from the tax collected under this chapter in the ensuing taxable year shall become available.

h. Depositories. The fire commissioner, as trustee, is hereby empowered and directed to receive all moneys and assets belonging or payable to such volunteer firemen's benevolent fund and shall deposit all such moneys to the credit of such fund in banks and trust companies to be selected by the fire commissioner.

i. Bond. The fire commissioner, as trustee of such fund, shall give a bond with one or more sureties, in a sum sufficient for the faithful performance of his or her duties, such bond to be approved as to amount and adequacy, by the comptroller and filed in the comptroller's office.

j. Records. The officers and employees of the fire department who are responsible for the maintenance of the books and records of the New York fire department pension fund shall have charge of, and keep the accounts of the fire commissioner as trustee of the volunteer firemen's benevolent fund.

k. Reports. The fire commissioner, as trustee of such volunteer firemen's benevolent fund, shall submit to the mayor on or before the first day of April of each year, a verified report in which shall be set forth the account of the fire commissioner's proceedings as such trustee during the twelve-month period ending on the thirty-first day of January immediately preceding. Such report shall include a statement of all receipts and disbursements on account of such benevolent fund, a list of the names, residences and as nearly as possible, the ages of the beneficiaries of such fund and the respective amounts paid to them during such period.

1. Audit. The comptroller shall have the power to audit the books and records of the fire commissioner as trustee of the volunteer firemen's benevolent fund.

(b) The moneys received by the fire commissioner as trustee pursuant to the provisions of paragraph three of subdivision (a) of this section shall be expended by the fire commissioner only as provided in such paragraph.

## CHAPTER 10
## OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

§ 11-1001 Legislative findings. It is hereby declared that: In certain areas of the city of Staten Island there exist unsanitary or substandard housing conditions owing to overcrowding and concentration of population, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, or lack of proper sanitary facilities; there is not an adequate supply of decent, safe and sanitary dwelling accommodations for persons of low income; these conditions cause an increase and spread of disease and crime and constitute a menace to the health, safety, morals, welfare and comfort of the citizens of the state, and impair economic values; these conditions cannot be remedied by the ordinary operation of private enterprise; the clearance, replanning and reconstruction of the areas in which unsanitary or substandard housing conditions exist and the providing of decent, safe and sanitary dwelling accommodations in such areas and elsewhere for persons of low income are public uses and purposes for

which public money may be spent and private property acquired; therefore the necessity in the public interest to enact the provisions of this chapter is hereby declared, as a matter of legislative determination.

§ 11-1002 Low rent housing and slum clearance; governmental functions. It is hereby declared as a matter of legislative determination that the clearing of areas in which the conditions described in section 11-1001 of this chapter exist and the furnishing of low rent housing for the occupants thereof be hereafter a function of the government of the city of Staten Island.

§ 11-1003 Housing authority; agent for city. It is hereby declared that the city housing authority be and it hereby is appointed as the agent for the city of Staten Island to carry out the functions described in section 11-1002 of this chapter.

§ 11-1004 Definitions. When used in this chapter: a. The word "occupation" means the use or possession for a consideration of any premises under any lease, concession, permit, right of access, license to use, or other agreement, for any gainful purpose.

b. The word "occupant" means any person who uses or possesses for a consideration any premises under any lease, concession, permit, right of access, license to use or other agreement for any gainful purpose.

c. The word "person" means an individual, co-partnership, society, association, joint-stock company, corporation, estate, receiver, assignee, trustee or any other person acting in a fiduciary capacity, whether appointed by a court or otherwise, and any combination of individuals.

d. The word "premises" means any real property, or any part thereof, any kind of space, or structure, except premises, as defined in this subdivision, which are located in, upon, above or under any public street, highway or public place, separately occupied in the city of Staten Island by any person for his or her own use for gainful purpose or by any concessionaire for such use for gainful purpose, whether by ownership, lease, sublease, profit-sharing arrangement or otherwise.

e. The words "rental value" mean the amount of the consideration annually fixed or charged against any person for the occupation of any premises during the period of one year commencing on July sixteenth of the year prior to the year in which the tax is due and terminating on July fifteenth of the year in which the tax is due, or if computed on a basis other than an annual basis, then the amount which would be equivalent to an annual charge for the occupation of the premises.

f. The words "non-federal project" shall mean a project not aided or financed in whole or in part by the federal government and where such government does not reserve the right to approve or supervise the construction or operation of the project.

g. The words "vending machine" mean a machine which vends or sells tangible personal property; and shall also include but not be limited to amusement devices, automatic sanitary facilities and all other machines vending services.

§ 11-1005 Imposition of the tax. a. To provide additional funds for the purpose of fulfilling any contract to make capital or periodic subsidies to the city housing authority in aid of a low rent or slum clearance project or for the purpose of paying an indebtedness incurred for a low rent or slum clearance project, every occupant of premises for a year or any part thereof in excess of one month and fifteen days shall pay annually to the commissioner of finance on June twentieth of each year until and including June twentieth, nineteen hundred eighty-one, a tax for each separate premises occupied at the rates computed, with

reference to the rental value for separate premises in the city of Staten Island, as specified in the following table:

| When the rental value is at least | And not more than | The amount of the tax shall be |
|---|---|---|
| $1.00 | $1,000.99 | $2.00 |
| 1,001.00 | 2,000.99 | 4.00 |
| 2,001.00 | 3,000.99 | 6.00 |
| 3,001.00 | 4,000.99 | 8.00 |
| 4,001.00 | 5,000.99 | 10.00 |
| 5,001.00 and over | | 12.00 |

b. Where the premises are occupied by vending machines which sell tangible personal property the tax shall be computed as specified in the following table:

| When the total value of the coins used in such vending machines is | The amount of the tax shall be |
|---|---|
| $.01 | $ .20 |
| .02 to .14 incl | .40 |
| .15 to .24 incl | 1.00 |
| .25 and over | 2.00 |

c. Where the premises are occupied by vending machines other than those which sell tangible personal property the tax shall be computed as specified in the following table:

| When the total value of the coins used in such vending machines is | The amount of the tax shall be |
|---|---|
| $.01 | $.40 |
| .02 and over | 2.00 |

§ 11-1006 Exemptions. No tax as imposed by section 11-1005 of this chapter shall be due or payable in any event for the occupation of any of the premises described in this section to the extent so occupied and no return need be made therefor pursuant to the provisions of this chapter if any of the following conditions be demonstrated to the satisfaction of the commissioner of finance:

1. That the premises are occupied by:

(a) Peddlers.

(b) Bootblacks, excluding shoe shine machines or enterprises where services other than the shining of shoes are rendered.

(c) Operators of pushcarts.

(d) Operators of kiosk or subway stands engaged solely and exclusively in the sale of newspapers, magazines and periodicals, or any combination thereof.

(e) Operators of stoop line stands licensed pursuant to chapter two of title twenty of the code of the preceding municipality.

(f) Operators of newspaper stands licensed pursuant to chapter two of title twenty of the code of the preceding municipality.

2. That the premises are occupied for a period of less than one month and fifteen days during the period of one year preceding July fifteenth of the year in which the tax is due.

3. That the premises are occupied by a co-operative corporation organized under the provisions of the cooperative corporations law of the state of New York, or an agricultural co-operative organized under the authority of the federal government.

4. That the premises are occupied by the state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the dominion of Canada, improvement district or other political subdivision of the state where it is the purchaser, user or consumer.

5. That the premises are occupied by the United Nations or other world-wide international organizations of which the United States of America is a member.

6. That the premises are occupied by a corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

7. That the premises are occupied by the United States of America under circumstances which make the premises immune from taxation.

§ 11-1007 Returns; payment of taxes. On or before the twentieth day of June in each year, every person subject to a tax hereunder, shall file a return with the commissioner of finance on the form to be furnished by the commissioner of finance. At the time of filing such return each person shall pay to the commissioner of finance the tax imposed pursuant to this chapter. Such tax shall be due and payable annually upon the twentieth day of June, whether or not a return is filed.

§ 11-1008 Presumption and burden of proof. It shall be presumed that the occupant of any premises is subject to the tax until the contrary is established, and the burden of proving that any occupation of premises is exempt from taxation shall be upon such occupant.

§ 11-1009 Determination of tax by the commissioner of finance. a. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient and the maker fails to file a corrected or sufficient return within twenty days after it is required by a notice from the commissioner of finance, the commissioner of finance shall tentatively determine the amount of tax due from such information as he or she may be able to obtain and, if necessary, may estimate the tax on the basis of external indices. The commissioner of finance shall give notice of the amount so fixed to the person liable for the tax. Unless the person against whom the tax is assessed shall within fifteen days after the giving of such notice apply in writing to the commissioner of finance for a hearing to correct such assessment, such notice shall constitute a final and irrevocable determination of the tax. After such hearing the commissioner of finance shall give notice of his or her decision to the person liable for the tax.

b. Such determination and the decision of the commissioner of finance upon any application to correct may be reviewed for error, illegality or unconstitutionality or for any reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules in the nature of a certiorari proceeding if application therefor is made to the supreme court within thirty days after the giving of notice thereof. Whenever under this chapter a proceeding to review is instituted, it shall not be allowed unless the amount of any tax sought to be reviewed, with penalties thereon, if any, shall be first deposited with the commissioner of finance, and an undertaking filed with the commissioner of finance, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 11-1010 Refunds. The commissioner of finance shall refund any tax erroneously, illegally or unconstitutionally collected by or paid to him or her, under protest in writing, stating in detail the ground or grounds of the protest, if application therefor shall be made to the commissioner of finance within one year from the payment thereof. For like cause and within the same period a refund may be made on the initiative of the commissioner of finance. Whenever a refund is made the commissioner of finance shall state his or her reasons therefor in writing. A person shall not be entitled to a hearing in connection with any application for a refund if he or she has already been given the opportunity of a hearing as provided in section 11-1009 of this chapter. No refund shall be made of a tax or penalty paid pursuant to a determination of the commissioner of finance as provided in section 11-1009 of this chapter, unless the commissioner of finance, after a hearing as in said section provided, or of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding under article seventy-eight of the civil practice law and rules that such determination was erroneous, illegal, unconstitutional, or otherwise improper, in which event a refund with interest shall be made as provided upon the determination of such proceeding. An application for a refund made as provided in this chapter shall be deemed an application for a revision of any tax or penalty complained of and the commissioner of finance may receive evidence with respect thereto. After making his or her determination the commissioner of finance shall give notice thereof to the person interested who shall be entitled to review such determination by a proceeding under article seventy-eight of the civil practice law and rules if application to the supreme court be made therefor within thirty days after such determination and an undertaking shall first be filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such order be dismissed or the tax confirmed, the applicant for the order will pay all costs and charges which may accrue in the prosecution of the certiorari proceeding.

§ 11-1011 Remedies exclusive. The remedies provided by section 11-1009 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination of tax or determination on an application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any legal or equitable action or proceeding other than one under article seventy-eight of the civil practice law and rules.

§ 11-1012 Reserves. In cases where the taxpayer has paid any tax under written protest stating in detail the ground or grounds therefor, or has applied for a refund and an order under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on the taxpayer's application for refund, or has deposited the amount of tax assessed in connection with a proceeding under section 11-1009 of this chapter the commissioner of finance shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-1013 Proceeding to recover tax. a. The commissioner of finance may issue a warrant directed to any officer or employee of the department of finance commanding him or her to levy upon and sell the real and personal property of the person from whom the tax is due for the payment of the amount thereof, with penalties, and the cost of executing the warrants, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due pursuant to this section as if the city had recovered judgment therefor and the execution thereon had been returned not satisfied. A copy of any warrant issued may be filed with the county clerk in Richmond county and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax and penalty for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in the real and personal property of the person against whom the warrant is issued.

b. As an additional or alternate remedy the commissioner of finance may request the corporation counsel to bring an action in the name of the city to enforce payment of a tax or penalty which any person has failed to pay.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision a of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1014 Notices and limitation of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a post paid envelope addressed to such person at the address given in the return filed by such person pursuant to the provisions of this chapter or if no return has been filed then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the city taken to levy, appraise,

assess, determine or enforce the collection of any tax or penalty provided by this chapter.

§ 11-1015 Penalties and interest. a. Any person failing to file a return or corrected return or to pay any tax or any portion thereof that may be required by this chapter shall be subject to a penalty of five times the amount of the tax due, plus five per centum of such tax for each month of delay or fraction thereof, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest. Penalties shall be paid to the commissioner of finance and disposed of in the manner as other receipts under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.

b. Any person filing or causing to be filed any return, certificate, affidavit or statement required or authorized by this chapter, which is wilfully false and any person who shall fail to file a return or to furnish a statement or other information as required under this chapter, shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

A certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be prima facie evidence thereof.

§ 11-1016 General powers of the commissioner of finance. In the administration of this chapter, the commissioner of finance is authorized to:

1. Make and publish reasonable rules and regulations as may be necessary for the exercise of the commissioner's powers and the performance of the commissioner's duties under this chapter.

2. Assess the tax authorized to be imposed under this chapter.

3. Subpoena and require the attendance of witnesses and the production of books, papers and other documents, and to take testimony and proofs, under oath, with reference to any matter within the line of the commissioner's official duty under this chapter.

4. Delegate the commissioner's functions hereunder to a deputy commissioner of finance or other employee or employees of the department of finance.

5. Prescribe methods for determining the rental values of premises, the occupant of which is taxable pursuant to the provisions of this chapter.

6. Require any person who receives or is entitled to receive a consideration for the occupation of premises to furnish a statement to the commissioner of finance, upon his or her request, containing information as to the name of each occupant and rental value of each for the occupation of such premises.

7. Nothing contained in section 11-1017 of this chapter or in any other provision of this chapter shall be construed to limit the authority of the commissioner of finance, hereby authorized, to furnish any information, whether or not contained in a return, to the tax commission or any other agency or department of the state of New York, or to the treasury department of the United States, or to any agency of the city of Staten Island, or to the district attorney of Richmond county.

8. To extend, for cause shown, the time for filing any return for a period not exceeding twenty days.

§ 11-1017 Returns to be secret. Except in accordance with judicial order, or upon subpoena issued by a court of competent jurisdiction, it

shall be unlawful for the commissioner of finance or any officer or employee of the city to divulge or make known in any manner, any information contained in any return required under this chapter. Nothing in this section shall be construed to prohibit the delivery to a taxpayer of a certified copy of any return filed by the taxpayer, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns, or the inspection by the corporation counsel of the return to any taxpayer who shall bring action or proceeding to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted or is contemplated for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the commissioner of finance orders them to be destroyed.

§ 11-1018 Disposition of revenue. All revenues and moneys heretofore or hereafter collected resulting from the imposition of taxes and penalties imposed by this chapter shall be deposited in the city treasury, and credited to a separate account. During each fiscal year, an amount not in excess of the amount of the subsidies to be made, and the amount of indebtedness incurred for low rent or slum clearance projects to be paid, during such fiscal year shall be charged to such account and credited to the general fund. No other payments shall be charged to such an account. The mayor may contract to make capital or periodic subsidies to the city housing authority in aid of a low rent project, or may incur indebtedness for a low rent slum clearance project, but such periodic subsidies shall not be contracted for a period longer than the life of such project and in no event for more than fifty years. If the amount of any such periodic subsidy shall be equal to or greater than the interest on and the amounts required annually for the payment of the indebtedness contracted by the authority on account of such project in each year, such contract shall constitute a guarantee of the principal of and the interest on such indebtedness, and such contract and the payments thereunder may be pledged by the authority as security in addition to all other security which the authority may give for such bonds. No such contract or periodic subsidies shall be made until the plan for such project shall have been approved in the manner provided by the public housing law.

§ 11-1019 Application; construction. If any provision of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. This chapter shall be construed in conformity with the public housing law.

## CHAPTER 11
## UTILITY TAX

§ 11-1101 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." Includes any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, assignee of rents, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

2. "Comptroller." The comptroller of the city.

3. "Commissioner of finance." The commissioner of finance of the city.

4. "Gross income." All receipts received in or by reason of any sale made including receipts from the sale of residuals and by-products, except sale of real property, or service rendered in the city, including cash, credits and property of any kind or nature, whether or not such sale is made or such service is rendered for profit, without any deduction therefrom on account of the cost of the property sold, the cost of material used, labor or services, delivery costs, any other costs whatsoever, interest or discount paid, or any other expense whatsoever; also profits from the sale of securities; also profits from the sale of real property growing out of the ownership or use of or interest in such property; also profit from the sale of personal property, other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable period for which a return is made; also receipts from interest, dividends and royalties without any deductions therefrom for any expense whatsoever incurred in connection with the receipt thereof, and also gains or profits from any source whatsoever; but shall not include gross income of railroads from the transportation of freight, gross income from the operation of hotels, multiple dwellings or office buildings by persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, or interest or dividends received from a corporation by such persons or by persons subject to taxation under the provisions of section one hundred eighty-six-a of the tax law. Rents or rentals shall not be deemed to be gross receipts subject to tax, except rents or rentals derived from facilities used in the public service; provided, however, that in the case of persons in the business of operating or leasing sleeping or parlor railroad cars or of operating railroads other than street surface, rapid transit, subways and elevated railroads, such last-mentioned rents or rentals derived from other such utilities with respect to the operation of terminal facilities shall not be deemed to be gross income subject to tax except for the amount in excess of a user proportion of New York city real property and special franchise taxes and expenses of maintenance and operation. Notwithstanding anything to the contrary in this subdivision or any other provision of law, for taxable periods beginning on or after August first, two thousand two, gross income shall include eighty-four percent of charges for the provision of mobile telecommunications services where the place of primary use of the mobile telecommunications services is within the territorial limits of the city except to the extent that such inclusion would result in the taxation of charges for the provision of mobile telecommunications services that is prohibited by federal law.

5. "Gross operating income." Includes receipts received in or by reason of any sale made or service rendered, of the property and services specified in subdivision seven of this section in the city, including cash, credits and property of any kind or nature, whether or not such sale is made or such service is rendered for profit, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or other services, delivery costs or any other costs whatsoever, interest or discount paid or any other expenses whatsoever, provided however, that if a vendor of utility service purchases gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigeration service in a transaction the receipts from which are not subject to the tax imposed under this chapter, the gross operating income derived by such vendor of utility service from the resale of such gas, electricity, steam, water or

refrigeration or such gas, electric, steam, water or refrigeration service to its tenants as an incident to such vendor's activity of renting premises to tenants, shall, if subject to the tax imposed under this chapter on such vendor, be conclusively presumed to be equal to the amount of such vendor's cost, including any associated transportation cost, for the purchase of such gas, electricity, steam, water or refrigeration or gas, electric, steam, water or refrigeration service for resale by such vendor. Notwithstanding anything to the contrary in this subdivision or any other provision of law, for taxable periods beginning on or after August first, two thousand two, gross operating income shall include eighty-four percent of charges for the provision of mobile telecommunications services where the place of primary use of the mobile telecommunications services is within the territorial limits of the city except to the extent that such inclusion would result in the taxation of charges for the provision of mobile telecommunications services that is prohibited by federal law.

6. "Utility." Every person subject to the supervision of the department of public service and, for taxable periods beginning on or after August first, two thousand two, every person, whether or not supervised by the department of public service, eighty percent or more of the gross receipts of which consists of charges for the provision of mobile telecommunications services to customers. Notwithstanding anything to the contrary in any other provision of law, for purposes of this subdivision, the gross receipts of a person shall not include the gross receipts of any other related or unrelated person.

7. "Vendor of utility services." Every person not subject to the supervision of the department of public service, and not otherwise a utility as defined in subdivision six of this section, who furnishes or sells gas, electricity, steam, water or refrigeration, or furnishes or sells gas, electric, steam, water, refrigeration or telecommunications services, or who operates omnibuses, whether or not such operation is on the public streets; regardless of whether such furnishing, selling or operation constitutes the main activity of such person or is merely incidental thereto.

8. "Return." Includes any return filed or required to be filed as provided under this chapter.

9. "Telecommunications services." Telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of voice image, data, information and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof and shall include services that are ancillary to the provision of telephone service, such as, but not limited to, dial tone, basic service, directory information, call forwarding, caller-identification, call waiting and the like, and also include any equipment and services provided therewith; provided, however, that the definition of telecommunication services shall not apply to separately stated charges for any service that alters the substantive content of the message received by the recipient from that sent; and that such services shall not include (i) cable television services that consist of the transmitting to subscribers of programs broadcast by one or more television or radio stations or any other programs originated by any person by means of wire, cable, microwave or any other means or (ii) air safety and navigation services where such telecommunication service is provided by an organization, at least ninety percent of which, if a corporation, ninety percent of the voting stock of which, is owned, directly or indirectly, by air carriers, and which organization's prin-

cipal function is to fulfill the requirements of (a) the federal aviation administration, or the successor thereto, or (b) the international civil aviation organization, or the successor thereto, relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station, or any combination of such, for the purposes of air safety and navigation.

10. "Limited fare omnibus company." An omnibus company whose principal source of revenue is derived from the daily transportation of passengers wholly within the city on a route or zoned portion thereof pursuant to a franchise agreement with, or consent of, the city, at the following fares: for the period from August first, nineteen hundred sixty-five until and including December thirty-first, nineteen hundred seventy-five, at a fare not in excess of thirty-five cents per passenger; for the period from January first, nineteen hundred seventy-six until and including June twenty-seventh, nineteen hundred eighty, at a fare not in excess of fifty cents per passenger; for the period from June twenty-eighth, nineteen hundred eighty until and including August thirty-first, nineteen hundred eighty, at a fare not in excess of sixty cents per passenger; for the period from September first, nineteen hundred eighty and thereafter, at a fare not in excess of the regular rate of fare charged per passenger for comparable service both local and express on regular rapid transit and surface lines operated by the New York city transit authority. For purposes of this subdivision, the term "regular rate of fare" shall be exclusive of fares for special train or bus service, or additional charges for bridge or tunnel tolls or transfer privileges.

11. "Commuter service." Mass transportation service, exclusive of limited stop service to airports, racetracks or any place where entertainment, amusement or sport activities are held or where recreational facilities are supplied, provided pursuant to a franchise with, or consent of, the city of New York.

12. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter of the preceding municipality.

13. "Base Year." Means the calendar year ending immediately prior to the calendar year containing the taxable period or periods for which a return is required to be filed pursuant to the provisions of section 11-1104 of this chapter.

14. "Taxable Period." Means the period for which a return is required to be filed pursuant to the provisions of this chapter and shall be either (i) the semiannual period beginning the first day of January or the first day of July of the calendar year, or (ii) the calendar month.

15. "Premises." Means for purposes of section 11-1102 of this chapter, any real property or part thereof, and any structure thereon or space therein.

16. "Tenant." Means a person paying, or required to pay, rent for premises as a lessee, sublessee, licensee or concessionaire.

17. "Mobile telecommunications services." Telecommunications services that are commercial mobile radio services.

18. "Commercial mobile radio services." Commercial mobile radio services as defined in section 20.3 of title forty-seven of the Code of Federal Regulations as in effect on June first, nineteen hundred ninety-nine.

19. "Charges for mobile telecommunications services." Any charge for, or associated with, the provision of mobile telecommunications services

and any charge for, or associated with, a service provided as an adjunct to mobile telecommunications services that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

20. "Place of primary use." The street address representative of where the customer's use of the mobile telecommunications services primarily occurs, which must be (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider.

21. "Licensed service area." The geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio services to the customer.

22. "Home service provider." The facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

23. "Customer." The person or entity that contracts with the home service provider for mobile telecommunications services. If the end user of mobile telecommunications services is not the contracting party, then, solely for purposes of subdivision twenty of this section, the term "customer" shall mean the end user of the mobile telecommunications services. The term customer does not include a reseller of mobile telecommunications services, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

24. "Reseller." A provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. The term reseller does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

25. "Serving carrier." A facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

26. "Cogeneration facility" means (i) a facility that was in operation before January first, two thousand four and that produces electric energy and steam or other forms of useful energy, such thermal energy, that are supplied to and used by tenants and/or occupants of a cooperative corporation for industrial, commercial, or residential heating or cooling purposes; or (ii) a cogeneration facility, as defined in clause (i) of this subparagraph, that has been replaced by any other facility used to generate electricity and steam or other forms of useful energy, such as thermal energy, when such electricity and steam or other forms of useful energy, such as thermal energy, are supplied to and used by tenants and/or occupants of a cooperative corporation.

27. "Enhanced zip code." A United States postal zip code of nine or more digits.

28. "Cooperative corporation" means a corporation organized under the laws of New York, at least some of the stockholders of which are entitled, by reason of the stockholders' ownership interest of stock in the corporation, to occupy for dwelling purposes an apartment in a building owned by the corporation pursuant to a lease or occupancy agreement with the corporation.

§ 11-1102 Imposition of excise tax. a. Notwithstanding any other provisions of law to the contrary, for the privilege of exercising its

franchise or franchises, or of holding property, or of doing business in the city, on or after August first, nineteen hundred sixty-five, every utility shall pay to the commissioner of finance an excise tax which shall be equal to two per centum of its gross income until and including December thirty-first, nineteen hundred sixty-five, and shall be equal to two and thirty-five hundredths per centum thereafter, except that the rate as to persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons shall be one per centum until and including December thirty-first, nineteen hundred sixty-five, and one and seventeen hundredths per centum thereafter, and except that as to persons engaged in the business of operating or leasing sleeping and parlor railroad cars or of operating railroads other than street surface, rapid transit, subway and elevated railroads, the rate shall be three per centum until and including December thirty-first, nineteen hundred sixty-five, and three and fifty-two one hundredths per centum thereafter, and every vendor of utility services in the city shall pay to the commissioner of finance an excise tax which shall be equal to two per centum of its gross operating income until and including December thirty-first, nineteen hundred sixty-five, and shall be equal to two and thirty-five one hundredths per centum thereafter, except that as to persons engaged in the business of operating omnibuses with a carrying capacity of more than seven persons other than omnibuses used exclusively for the transportation of children to and from schools operated under contracts made pursuant to the provisions of the education law, and not subject to the jurisdiction of the department of public service, the rate shall be one per centum of its gross operating income until and including December thirty-first, nineteen hundred sixty-five, and one and seventeen hundredths per centum thereafter. Such tax shall be in addition to any and all other taxes, charges and fees imposed by any other provision of law and shall be paid at the time and in the manner provided in this section, but any person to the extent that it is subject to tax pursuant to this section shall not be liable to any tax under any other of the local laws of the preceding municipality as it existed January first, nineteen hundred ninety-four enacted pursuant to chapter ninety-three of the laws of nineteen hundred sixty-five as amended, or the former article two-b of the general city law, with respect to its gross income or gross operating income taxed pursuant to this section, as the case may be.

b. So much of the gross income of a utility shall be excluded from the measure of the tax imposed by this chapter, as is derived from sales for resale to vendors of utility services validly subject to the tax imposed by this chapter, except to the extent that such gross income is derived from sales of gas, electricity, steam, water or refrigeration or sales or rendering of gas, electric, steam, water or refrigeration service to a vendor of utility services for resale to its tenants as an incident to such vendor's activity of renting premises to tenants.

c. For the purpose of proper administration of this chapter and to prevent evasion of the tax imposed by this section, it shall be presumed that the gross income or gross operating income of any person taxable pursuant to this section is taxable and is derived from business conducted wholly within the territorial limits of the city until the contrary is established, and the burden of proving that any part of its gross income or gross operating income is not so derived shall be upon such person. Notwithstanding anything to the contrary in this subdivision or in any provision of section twenty-b of the general city law or any other provision of law, for taxable periods beginning on or after

August first, two thousand two, gross income and gross operating income derived from the provision of mobile telecommunications services shall be deemed to be derived from business conducted wholly within the territorial limits of the city where the place of primary use of the mobile telecommunications services is within the territorial limits of the city.

d. The tax imposed by this chapter shall be inapplicable to the gross income received by a limited fare omnibus company until and including August thirty-first, nineteen hundred eighty. Thereafter, such tax shall be applicable to such gross income received as follows: (1) for gross income received from commuter service from September first, nineteen hundred eighty until and including December thirty-first, nineteen hundred eighty-three, the rate of tax shall be one hundredth of one per centum; (2) for gross income received from commuter service from January first, nineteen hundred eighty-four and thereafter, the rate of tax shall be one tenth of one per centum; and (3) for gross income received from all other sources, the rate of tax shall be as provided in subdivision a of this section.

e. The gross operating income of a vendor of utility services derived from sales to its tenants of gas, electricity, steam, water, or refrigeration or sales or rendering to its tenants of gas, electric, steam, water or refrigeration service, as an incident to such vendor's activity of renting premises to tenants, shall be excluded from the measure of the tax imposed by this chapter, but, with regard to sales to its tenants of gas, electricity, or steam or sales or rendering to its tenants of gas, electric or steam service, only to the extent that the tax imposed by this chapter has been validly paid or accrued with respect to a prior sale of such gas, electricity or steam or sale or rendering of gas, electric or steam service.

f. (1) Notwithstanding anything contained in this chapter to the contrary, for taxable periods beginning on or after August first, two thousand two, if a partnership is subject to the tax imposed by this chapter as a utility or as a vendor of utility services, no person who is a partner in such a partnership shall be subject to the tax imposed by this chapter on such partner's distributive share of the gross income or gross operating income of such partnership.

(2) If a person is a partner in a partnership subject to the tax imposed by this chapter and that person is separately subject to the supervision of the state department of public service or is a utility or a vendor of utility services based on its activities exclusive of any activities of such partnership, for taxable periods beginning on or after August first, two thousand two, such person shall be subject to the tax imposed by this chapter only on its separate gross income or separate gross operating income, which shall not include such person's distributive share of the gross income or gross operating income of such partnership.

(3) For purposes of this subdivision, the term "partner" shall include a person who receives a distributive share of the gross income or gross operating income, directly or indirectly through one or more tiers of partnerships, of a partnership subject to the tax imposed by this chapter.

g. Notwithstanding anything else contained in this chapter to the contrary, for the taxable periods beginning on or after January first, two thousand six, if a cooperative corporation containing at least fifteen hundred apartments furnishes or sells electricity, steam, refrigeration or water, or furnishes or sells electric, steam, refriger-

ation or water services that are (i) metered, (ii) generated or produced by a cogeneration facility owned or operated by such cooperative corporation, and (iii) such electricity, steam, refrigeration or water and/or electric, steam, refrigeration or water services are distributed to tenants and/or occupants of a cooperative corporation, then such cooperative corporation shall pay to the commissioner of finance an excise tax which shall be equal to zero per centum of its gross income or its gross operating income, as the case may be.

§ 11-1103 Records to be kept. Every person subject to tax pursuant to this chapter shall keep records of its business and in such form as the commissioner of finance may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by such commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

§ 11-1104 Returns; requirements as to. a. Except as otherwise provided in subdivision e of this section with respect to taxable periods beginning after nineteen hundred ninety-eight, on or before the twenty-fifth day of September, nineteen hundred sixty-five, and on or before the twenty-fifth day of every month thereafter, every person subject to tax pursuant to this chapter shall file a return with the commissioner of finance on a form to be prescribed by such commissioner. Such return shall state the gross income or gross operating income as the case may be for the preceding calendar month, and shall contain any other data, information or other matter which the commissioner of finance may require to be included therein. The commissioner of finance may require at any further time a supplemental return, which shall contain any data upon such matters as such commissioner may specify. Notwithstanding the provisions of this subdivision and notwithstanding the provisions of subdivision e of this section, a vendor of utility services, all of whose gross operating income is excluded from the measure of the tax imposed by this chapter pursuant to subdivision e of section 11-1102 of this chapter during any taxable period, shall not be required to file a return for such taxable period, provided, however, that on or before the first day of September of each year, any such vendor of utility services who was not required to file a return for any taxable period during the period covered by the statement required to be filed by such date pursuant to subdivision a of section 11-208.1 of this title shall file an information return covering such period in such form and containing such information as the commissioner of finance may specify.

b. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such return or of a corrected return.

d. Where the state tax commission changes or corrects a taxpayer's sales and compensating use tax liability with respect to the purchase or use of items for which a sales or compensating use tax credit against the tax imposed by this chapter was claimed, the taxpayer shall report such change or correction to the commissioner of finance within ninety days of the final determination of such change or correction, or as required by the commissioner of finance, and shall concede the accuracy

of such determination or state wherein it is erroneous. Any taxpayer filing an amended return or report with the state tax commission relating to the purchase or use of such items shall also file within ninety days thereafter a copy of such amended return or report with the commissioner of finance.

e. With respect to taxable periods beginning after nineteen hundred ninety-eight, notwithstanding the provisions of subdivision a of this section, if the amount of tax imposed pursuant to this section on any person in the base year does not exceed one hundred thousand dollars, the taxable period for which such person is required to file a return is the semiannual period described in paragraph i of subdivision fourteen of section 11-1101 of this chapter, and such person shall file a return for each semiannual period of the first calendar year beginning after the base year on or before the twenty-fifth day of the month following the end of each such taxable period. Such return shall be filed with the commissioner of finance on a form to be prescribed by such commissioner.

Such return shall state the gross income or gross operating income as the case may be for the preceding taxable period and shall contain any other data, information or other matter which the commissioner of finance may require to be included therein. The commissioner of finance may require at any further time a supplemental return, which shall contain any data upon such matters as such commissioner may specify. For the purposes of this subdivision, if the amount of tax imposed pursuant to this chapter on such person in the base year is for a period of less than one year, the amount of tax imposed on such person shall be annualized by multiplying the amount of tax imposed by a fraction, the denominator of which is the number of months or parts thereof during which the person was subject to the tax imposed pursuant to this chapter and the numerator of which is twelve. Notwithstanding the provisions of this subdivision, a person that first becomes subject to the tax pursuant to this chapter shall file a return for each month in the calendar year in which such person first becomes subject to such tax in accordance with subdivision a of this section.

§ 11-1105 Payment of tax; credit for certain sales and compensating use taxes. a. At the time of filing each return, as provided under section 11-1104 of this chapter, each person taxable pursuant to this chapter shall pay to the commissioner of finance the taxes imposed by this chapter upon its gross income or gross operating income, as the case may be, for the taxable period covered by such return, less any credit to which such person may be entitled under subdivision b of this section. Such taxes shall be due and payable on the last day on which the return for such period is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

b. (1) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the amount of sales and compensating use taxes imposed by section eleven hundred seven of the tax law which became legally due on or after, and which were paid on or after, July first, nineteen hundred seventy-seven but within the taxable period for which a credit is claimed, with respect to the purchase or use by the taxpayer of machinery or equipment for use or consumption directly and predominantly in the production of steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communi-

cation, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus.

(2) The amount of the credit provided in paragraph one of this subdivision shall be limited to the amount of such sales and compensating use taxes paid during the taxable period covered by the return under this chapter on which the credit is taken less the amount of any credit or refund of such sales and compensating use taxes during such taxable period. If such credit exceeds the amount of tax under this chapter payable for the taxable period in question, such excess amount shall be refunded or credited except in the case of a vendor of utility services who is entitled to a credit and/or refund for such sales and compensating use taxes under chapter five or six of this title. The credit allowed under this subdivision shall be deemed an erroneous payment of tax by the taxpayer to be credited or refunded in accordance with the provisions of section 11-1108 of this chapter, except as otherwise provided in this paragraph.

(3) Where the taxpayer receives a refund or credit of any tax imposed under section eleven hundred seven of the tax law for which the taxpayer has claimed a credit under the provisions of this subdivision in a prior taxable period, the amount of such refund or credit shall be added to the tax imposed by section 11-1102 of this chapter of the taxable period in which such refund or credit of tax under section eleven hundred seven of the tax law is received.

§ 11-1105.1 Credit for rebates of charges for energy. A taxpayer shall be allowed a credit against the amount of taxes imposed by this chapter for the amount of special rebates and discounts made in accordance with the provisions of section 22-602 of the code of the preceding municipality and for the amount of special rebates and discounts made in accordance with the provisions of section twenty-five-bb of the general city law. Such credit shall be applied against the amount of tax otherwise required to be paid as provided in subdivision a of section 11-1105 of this chapter and shall be claimed for the taxable period immediately succeeding the taxable period in which such rebates or discounts are made.

§ 11-1105.2 Relocation and employment assistance program credit. (a) A taxpayer that has obtained the certifications required by chapter six-B of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this chapter, provided, however, that a taxpayer that is a vendor of utility services shall not be allowed the credit against the tax imposed by this chapter unless it elects as provided in subdivision (d) of section 22-622 of the code of the preceding municipality to take the credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying one thousand dollars or, in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two a certification of eligibility dated on or after July first, two thousand, for a relocation to eligible premises located within a revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, three thousand dollars, by the number of eligible aggregate employment shares maintained by the taxpayer during the calendar year with respect to particular premises to which the taxpayer has relocated; provided, however, with respect to a relocation for which no application for a certificate of eligibility is submitted prior to July first, two thousand three, to eligible premises that are within a revitalization area, if the date of such relocation as determined pursu-

ant to subdivision (j) of section 22-621 of the code of the preceding municipality is on or after January first, nineteen hundred ninety-nine, and before July first, two thousand, the amount to be multiplied by the number of eligible aggregate employment shares shall be one thousand dollars; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services; and provided that in the case of an eligible business that has obtained pursuant to chapter six-B of such title twenty-two certifications of eligibility for more than one relocation, the portion of the total amount of eligible aggregate employment shares to be multiplied by the dollar amount specified in this subdivision for each such certification of a relocation shall be the number of total attributed eligible aggregate employment shares determined with respect to such relocation pursuant to subdivision (o) of section 22-621 of the code of the preceding municipality. For purposes of this subdivision, the terms "eligible aggregate employment shares", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-621 of the code of the preceding municipality.

(b) The credit allowed under this subdivision with respect to eligible aggregate employment shares maintained with respect to particular premises to which the taxpayer has relocated shall be allowed for the taxable periods in the first calendar year during which such eligible aggregate employment shares are maintained with respect to such premises and for taxable periods in any of the twelve succeeding calendar years during which eligible aggregate employment shares are maintained with respect to such premises, provided that the credit allowed for the taxable periods in the twelfth succeeding calendar year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to such premises in the twelfth succeeding calendar year by the lesser of one and a fraction the numerator of which is the number of days in the calendar year of relocation less the number of days the eligible business maintained employment shares in the eligible premises in the calendar year of relocation and the denominator of which is the number of days in such twelfth succeeding year during which such eligible aggregate employment shares are maintained with respect to such premises. The credit allowable under this section shall be applied against the amount of tax otherwise required to be paid for the last taxable period of the calendar year as provided in subdivision a of section 11-1105 of this chapter, shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of such section, and shall be claimed on the tax return for the last taxable period of the calendar year. Except as provided in subdivision (c) of this section, if the amount of the credit allowable under this subdivision for any calendar year exceeds the tax imposed for such last taxable period in such calendar year, the excess may be carried over, in order, to the immediately succeeding taxable periods in the five immediately succeeding calendar years and, to the extent not previously allowable, shall be applied against the tax otherwise required to be paid for such periods. Such carryover credit shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of section 11-1105 of this chapter. With respect to the last taxable period in a calendar year, the credit for such calendar year shall be taken prior to any carryover credit. If in any period there are carryover credits available from more than one year, such credits shall be applied against the tax in the order in which they were earned with the oldest available credit being taken first.

(c) In the case of a taxpayer that has obtained a certification of eligibility pursuant to chapter six-B of title twenty-two of the code of the preceding municipality dated on or after July first, two thousand for a relocation to eligible premises located within the revitalization area defined in subdivision (n) of section 22-621 of the code of the preceding municipality, the credits allowed under this section, or in the case of a taxpayer that has relocated more than once, the portion of such credits attributed to such certification of eligibility pursuant to subdivision (a) of this section, against the tax imposed by this chapter for the calendar year of such relocation and for the four calendar years immediately succeeding the calendar year of such relocation, shall be deemed to be erroneous payments of tax by the taxpayer to be credited or refunded, in accordance with the provisions of section 11-1108 of this chapter. For such calendar years, such credits or portions thereof may not be carried over to any succeeding taxable year; provided, however, that this subdivision shall not apply to any relocation for which an application for a certification of eligibility was not submitted prior to July first, two thousand three unless the date of such relocation is on or after July first, two thousand.

§ 11-1105.3 Lower Manhattan relocation employment assistance credit. (a) A taxpayer that has obtained the certifications required by chapter six-C of title twenty-two of the code of the preceding municipality shall be allowed a credit against the tax imposed by this chapter, provided, however, that a taxpayer that is a vendor of utility services shall not be allowed the credit against the tax imposed by this chapter unless it elects as provided in subdivision (d) of section 22-624 of the code of the preceding municipality to take the credit against the tax imposed by this chapter. The amount of the credit shall be the amount determined by multiplying three thousand dollars by the number of eligible aggregate employment shares maintained by the taxpayer during the calendar year with respect to eligible premises to which the taxpayer has relocated; provided, however, that no credit shall be allowed for the relocation of any retail activity or hotel services. For purposes of this subdivision, the terms "eligible aggregate employment shares", "eligible premises", "relocate", "retail activity" and "hotel services" shall have the meanings ascribed by section 22-623 of the code of the preceding municipality.

(b) The credit allowed under this section with respect to eligible aggregate employment shares maintained with respect to eligible premises to which the taxpayer has relocated shall be allowed for the taxable period in which the relocation to eligible premises takes place and for succeeding taxable periods in the calendar year of the relocation and in any of the twelve succeeding calendar years during which eligible aggregate employment shares are maintained with respect to eligible premises, provided that the credit allowed for the taxable periods in the twelfth succeeding calendar year shall be calculated by multiplying the number of eligible aggregate employment shares maintained with respect to eligible premises in the twelfth succeeding calendar year by the lesser of one and a fraction the numerator of which is the number of days in the calendar year of relocation less the number of days the taxpayer maintained employment shares in eligible premises in the calendar year of relocation and the denominator of which is the number of days in such twelfth succeeding calendar year during which such eligible aggregate employment shares are maintained with respect to such premises. The credit allowable under this section shall be applied against the amount of tax otherwise required to be paid for the last taxable period of the

calendar year as provided in subdivision a of section 11-1105 of this chapter, shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of such section but after the credit provided for in section 11-1105.2 of this chapter, and shall be claimed on the tax return for the last taxable period of the calendar year. Except as provided in subdivision (c) of this section, if the amount of the credit allowable under this subdivision for any calendar year exceeds the tax imposed for such last taxable period in such calendar year, the excess may be carried over, in order, to the immediately succeeding taxable periods in the five immediately succeeding calendar years and, to the extent not previously allowable, shall be applied against the tax otherwise required to be paid for such periods. Such carryover credit shall be deducted from the taxpayer's tax prior to the deduction of the credit provided in subdivision b of section 11-1105 of this chapter but after the credit provided for in section 11-1105.2 of this chapter. With respect to the last taxable period in a calendar year, the credit for such calendar year shall be taken prior to any carryover credit. If in any period there are carryover credits available from more than one year, such credits shall be applied against the tax in the order in which they were earned with the oldest available credit being taken first.

(c) The credits allowed under this section, against the tax imposed by this chapter for the calendar year of the relocation and for the four taxable years immediately succeeding the calendar year of such relocation, shall be deemed to be overpayments of tax by the taxpayer to be credited or refunded, without interest, in accordance with the provisions of section 11-1108 of this chapter. For such calendar years, such credits or portions thereof may not be carried over to any succeeding calendar year.

§ 11-1106 Determination of tax. In case the return required by this chapter shall be insufficient or unsatisfactory or if such return is not filed, the commissioner of finance shall determine the amount of the tax due from such information as is obtainable, and if necessary the tax may be estimated upon the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix such tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless such commissioner of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding

under article seventy-eight of the civil practice law and rules if instituted by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under such article of such law and rules shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed with penalties and interest thereon, if any, shall first be deposited with the commissioner of finance and there shall be filed with such commissioner an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-1107 Assessment of tax where change or correction of sales and compensating use tax liability involved. a. If a taxpayer fails to comply with subdivision d of section 11-1104 of this chapter in not reporting a change or correction of its sales and compensating use tax liability or in not filing a copy of an amended return or report relating to its sales and compensating use tax liability, instead of the mode and time of assessment provided for in section 11-1106 of this chapter, the commissioner of finance may assess a deficiency based upon such changed or corrected sales and compensating use tax liability, as same relates to credits claimed under this chapter, by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the state change or correction or a copy of an amended return or report, where such copy was required, is filed accompanied by a statement showing wherein such state determination and such notice of additional tax due are erroneous. Such notice shall not be considered as a notice of determination for the purposes of section 11-1106 of this chapter.

b. If a report filed pursuant to subdivision d of section 11-1104 of this chapter concedes the accuracy of a state change or correction of sales and compensating use tax liability, any deficiency in tax resulting therefor shall be deemed assessed on the date of filing such report.

§ 11-1108 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if application for such refund shall be made to the commissioner of finance within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. Whenever a refund or credit is made or denied by the commission-

er of finance, he or she shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as provided in this section, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, a final determination of tax due was not previously made.

c. If a taxpayer is required by subdivision d of section 11-1104 of this chapter to file a report or amended return in respect of a change or correction of its sales and compensating use tax liability, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within one year from the time such report or amended return was required to be filed with the commissioner of finance. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

d. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-1106 or 11-1107 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in such sections, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1106 or 11-1107 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner of finance's own motion or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-1109 Reserves. In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-1110 Remedies exclusive. The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by a declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1106 of this chapter.

§ 11-1111 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter as provided in this section, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, such commissioner in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties might be satisfied and that any such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As a further additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff, commanding him or her to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any penalties and the cost of executing the warrant and to return such warrant to such commissioner and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall have the full force and effect of a judgment and shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions against property upon judgments of a court of record, and for services in executing the warrant he or she shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer

or employee of the department of finance and in the execution thereof such officer or employee shall have all the power conferred by law upon sheriffs, but he or she shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandising or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the commissioner of finance required by this subdivision, or whenever such commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of former article six of the uniform commercial code shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1112 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to prescribe the form of blanks, reports and other records relating to the enforcement and administration of this chapter;

2. To prescribe methods for determining the amount of "gross income" and "gross operating income" received by a person subject to tax pursuant to this chapter;

3. To request information from the tax commission of the state of New York or treasury department of the United States relative to any person; and to afford returns, reports and other information to such tax commission or such treasury department relative to any person, any other provision in this chapter to the contrary notwithstanding;

4. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes imposed pursuant to this chapter;

5. To delegate his or her functions hereunder to a deputy commissioner of finance or other employee or employees of the department of finance of the city;

6. To assess, determine, revise and readjust the taxes imposed under this chapter.

§ 11-1113 Administration of oaths and compelling testimony. a. The commissioner of finance, his or her employees duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceedings in the exercise of their powers and duties under this chapter. Such commissioner and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of such commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter, and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4002 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff, and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-1114 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at

the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-1106 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code of nineteen hundred fifty-four, respectively, and the payee fails to include any portion of such payment in gross income or gross operating income, when required under this chapter to be so included, any portion of an underpayment attributable to such failure shall be treated, for purposes of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subdivision by reason of this paragraph, the amount of the penalty imposed by paragraph one of this subdivision shall be five percent of the portion of the underpayment which is attributable to the failure described in this paragraph.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to two times of the underpayment.

(2) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g) (1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(i) Substantial understatement of liability. If there is a substantial understatement of tax for any taxable period, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of tax for any taxable period if

the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars. For purposes of this subdivision, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period, over the amount of the tax imposed which is shown on the return, reduced by any rebate. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The commissioner of finance may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(j) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this title of any return, report, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, report, statement or other document shall pay a penalty not exceeding ten thousand dollars.

(2) For purposes of paragraph one of this subdivision, the term "procures" includes ordering, or otherwise causing, a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person, whether or not a director, officer, employee, or agent of the taxpayer involved, over whose activities the person has direction, supervision, or control.

(3) For purposes of paragraph one of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

(k) Failure to include on return information relating to issuer's allocation percentage. Where a return is filed but does not contain (1) the information necessary to compute the taxpayer's issuer's allocation percentage, as defined in subparagraph one of paragraph (b) of subdivision three of section 11-604 of this title, where the same is called for on the return, or, (2) the taxpayer's issuer's allocation percentage, where the same is called for on the return but where all of the information necessary for the computation of such percentage is not called for on the return, then unless it is shown that such failure is due to reasonable cause and not due to willful neglect there shall be added to the tax a penalty of five hundred dollars.

(l) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department shall be subject to a penalty of one hundred dollars per document submitted, or five hundred

dollars per tax return submitted. Such penalty shall be in addition to any other penalty or addition provided by law.

§ 11-1115 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by him or her, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action by the city taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax imposed under a local law for the preceding municipality enacted subsequent to July first, nineteen hundred thirty-eight, shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed, or where the taxpayer fails to file a report or return in respect of a change or correction in the amount of sales and compensating use tax liability as provided by law, the tax may be assessed at any time. Where the taxpayer files a report or return in respect of a change or correction in sales and compensating use tax liability, as required by subdivision d of section 11-1104 of this chapter, an assessment may be made at any time within two years after such report or return was filed, provided, however, that this sentence shall not affect the time within which an assessment may otherwise be made.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration

shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions such with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance; provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or

additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-1116 Returns to be secret. a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the tax appeals tribunal, or any officer or employee of the department of finance or the tax appeals tribunal to divulge or make known in any manner, the receipts or any other information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city or the commissioner of finance, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events, the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing in this subdivision shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his or her tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the city or other legal representatives of such city of the return of any taxpayer who shall bring action or proceeding to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted or is contemplated for the collection of a tax, penalty or interest. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-1117 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter ninety-three of the

laws of nineteen hundred sixty-five, as amended, pursuant to which it is enacted.

§ 11-1118 Disposition of revenues. All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

§ 11-1119 Determinations of place of primary use of wireless telecommunications services. a. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use as defined in subdivision twenty of section 11-1101 of this chapter. Except as provided in subdivision b of this section, if the home service provider's reliance on the information provided by its customer is in good faith: (1) the home service provider can rely on the applicable residential or business street address supplied by the home service provider's customer; and (2) the home service provider shall not be held liable for any additional taxes under this chapter based on a different determination of the place of primary use.

b. The commissioner of finance, or the commissioner of taxation and finance of the state of New York on behalf of the commissioner of finance, may determine that the address used by a home service provider for purposes of this chapter does not meet the definition of place of primary use as defined in subdivision twenty of section 11-1101 of this chapter and may give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if:

(1) where the determination is made by the commissioner of finance, such commissioner obtains the consent of all affected taxing jurisdictions within this state before giving such notice of determination; and

(2) before the commissioner of finance or the commissioner of taxation and finance of the state of New York gives such notice of determination, the customer is given an opportunity to demonstrate, in accordance with applicable procedures established by the commissioner of finance making the determination, that that address is the customer's place of primary use.

c. Except as provided in subdivision b of this section, a home service provider may treat the address used by the home service provider for purposes of this chapter for the last taxable period beginning before August first, two thousand two, for any customer under a service contract or agreement in effect on July twenty-eighth, two thousand two as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement.

§ 11-1120 Assignment of place of primary use of telecommunications services to the city. a. If an electronic database meeting the requirements of subsection a of section one hundred nineteen of title four of the United States Code is provided by the state of New York, or by a designated database provider as defined in subsection three of section one hundred twenty-four of such title, and the requirements of subsection b of such section one hundred nineteen are met, a home service provider shall use that database to determine whether the customer's place of primary use is within the territorial limits of the city and shall reflect changes to such database in accordance with subsection c of such section one hundred nineteen.

b. A home service provider using the data contained in an electronic database described in subdivision a of this section shall be held harm-

less from any tax liability that otherwise would be due under this chapter solely as a result of any error or omission in such database provided the home service provider has properly reflected changes to such database in accordance with subsection c of section one hundred nineteen of title four of the United States Code.

c. (1) If no electronic database is provided as described in subdivision a of this section, a home service provider shall be held harmless from any tax liability under this chapter that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to subdivision d of this section, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each such street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within such enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with subdivision d of this section is deemed to be in compliance with this subdivision. For purposes of this subdivision, there is a rebuttable presumption that a home service provider has exercised due diligence if such home service provider demonstrates that it has: (i) expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions; (ii) implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and (iii) used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations and any other changes in jurisdictional boundaries that materially affect the accuracy of such database.

(2) Paragraph one of this subdivision applies to a home service provider that is in compliance with the requirements of such paragraph until the later of: (i) eighteen months after the nationwide standard numeric code described in subsection (a) of section one hundred nineteen of title four of the United States Code has been approved by the federation of tax administrators and the multistate tax commission; or (ii) six months after the state of New York or a designated database provider provides a database as prescribed in subdivision a of this section.

d. The commissioner of finance, or the commissioner of taxation and finance of the state of New York on behalf of the commissioner of finance, may determine that the assignment of a street address to a taxing jurisdiction by a home service provider under subdivision c of this section does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if: (1) where the determination is made by the commissioner of finance, such commissioner obtains the consent of all affected taxing jurisdictions within this state before giving such notice of determination; and (2) the home service provider is given an opportunity to demonstrate in accordance with applicable procedures established by the commissioner of finance making the determination that the assignment reflects the 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,

nineteen hundred fifty-two and annually thereafter, before the opening of any race meeting in each year, execute and file with the commissioner of finance a bond issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility in an amount sufficient to secure the payment of the taxes and/or penalties and interest due or which may become due pursuant to this section, to be fixed by the commissioner of finance.

§ 11-1204 Returns. a. Every racing corporation or association shall file with the commissioner of finance daily after each day of each race meeting or at such regular intervals as the commissioner of finance may require and upon such forms as shall be prescribed by the commissioner of finance a return showing the taxes collected pursuant to this chapter and the number of persons admitted to meetings conducted by the racing corporation or association during the periods covered by the return, together with any and all other information which the commissioner of finance shall require to be included and reported in such return. The commissioner of finance may require at any time supplemental or amended returns of such additional information or data as he or she may specify.

b. Every return required pursuant to this section shall have annexed thereto an affidavit of an officer of the racing corporation or association to the effect that the statements contained therein are true.

§ 11-1205 Records to be kept and audits by commissioner of finance. Every racing corporation or association shall keep such records as may be prescribed by the commissioner of finance, of all admissions and taxes collected pursuant to this chapter. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agents or employees, and such records shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period, and may require that they be kept longer than three years.

§ 11-1206 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of race meetings held, admissions, paid attendance, and/or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving the notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the

preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person liable for the tax and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed with interest and penalties thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding, or at the option of such person such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event such person shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-1207 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally, or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reason therefor and give notice thereof to the applicant in writing. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure, pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days of the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as provided under this section, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to section one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax

appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc, provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person liable for the tax, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a person liable for the tax unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which has been determined to be due pursuant to the provisions of section 11-1206 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1206 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-1208 Reserves. In cases where a person has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such person on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-1209 Remedies exclusive. The remedies provided by sections 11-1206 and 11-1207 of this chapter shall be exclusive remedies available to any person for the review of tax liability imposed by this chapter, and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that such person may proceed by declaratory judgment if such person institutes suit within ninety days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1206 of this chapter.

§ 11-1210 Proceedings to recover tax. a. Whenever any racing corporation or association or any of its officers or any other person shall fail to collect and pay over any tax or to pay any tax, penalty or interest imposed by this chapter as therein provided, the corporation

counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a person subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalties might be satisfied, and that any such tax or penalty will not be paid when due, the commissioner of finance may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the racing corporation or association or its officers or any other person which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner of finance the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrants the city sheriff shall be entitled to the same fees, which the city sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever a corporation or association shall make a sale, transfer or assignment in bulk or any part or the whole of its race meeting grounds or enclosures and the building and structures thereon, or its lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures or of the equipment, machinery, fixtures or supplies, or of the said race meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures, and the equipment, machinery, fixtures or supplies pertaining to the conduct or the operation of the said race meeting grounds or enclosures, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such race

meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures or the equipment, machinery, fixtures or supplies, or of the said race meeting grounds or enclosures and the building and structures thereon, or lease, license or other agreement or right to possess or operate such race meeting grounds or enclosures, and the equipment, machinery, fixtures or supplies or paying thereof, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the opening paragraph of this subdivision, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of former article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1211 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, such commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the racing commission and the tax commission of the state of New York, or any other state or the treasury department of the United States relative to any person; and to afford information to such commission or such treasury department relative to

any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions under this section to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe methods for determining the amount of the admissions and for determining the tax;

6. To require racing corporations or associations to keep detailed records of all race meetings and all attendance thereat, and to furnish such information upon request to the commissioner of finance;

7. To require that the amount of the tax be printed, separate from the price of admission, on tickets of admission.

§ 11-1212 Administration of oaths and compelling testimony. a. The commissioner of finance, his or her employees or agents duly designated and authorized by the commissioner of finance, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal under this section and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner of finance or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies, or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-1213 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid over or paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined

with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-1206 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to

interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) Officers of a racing corporation or association shall be personally liable for the tax collected or required to be collected under this chapter, and subject to the penalties imposed by this section.

(2) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return or bond has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(3) Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-1214 Returns to be secret. a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance or the tax appeals tribunal or any officer or employee of the department of finance to divulge or make known in any manner any of the information relating to the business of any person contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the courts may require the production of, and may admit in

evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-1206 or 11-1207 of this chapter. Nothing in this section shall be construed to prohibit the delivery to a person or such person's duly authorized representative of a certified copy of any return filed by such person nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city, or by the district attorney of Richmond county, of the return of any person who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-1215 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, that

where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed under this section for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may

withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance. Notwithstanding the provisions of this paragraph, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. Notwithstanding the foregoing, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-1216 Disposition of revenues. All revenues resulting from the imposition of the tax under this chapter at race meeting grounds or enclosures located wholly within the city of Staten Island shall be credited and deposited in the general fund of the city.

## CHAPTER 13
## CIGARETTE TAX

§ 11-1301 Definitions. When used in this chapter the following words shall have the meanings herein indicated:

1. "Cigarette." (a) Any roll for smoking made wholly or in part of tobacco or any other substance wrapped in paper or in any other substance not containing tobacco, and (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subdivision. However, a roll will not be considered to be a cigarette for purposes of paragraph (b) of this subdivision if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April first, two thousand eight. "Cigarette" shall not include a research tobacco product.

2. "Person." Any 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. "Sale or purchase." Any transfer of title or possession or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever or any agreement therefor.

4. "Use." Any exercise of a right or power, actual or constructive, and shall include but is not limited to the receipt, storage, or any keeping or retention for any length of time, but shall not include possession for sale by a dealer.

5. "Dealer." Any wholesale dealer or retail dealer as defined in subdivisions six and seven of this section.

6. "Wholesale dealer." Any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale only, and any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person.

7. "Retail dealer." Any person other than a wholesale dealer engaged in selling cigarettes or tobacco products. For the purposes of this chapter, the possession or transportation at any one time of five thousand or more cigarettes or little cigars, or more than fifty cigars, or more than one pound of loose tobacco, smokeless tobacco, snus or shisha, or any combination thereof, by any person other than a manufacturer, an agent, a licensed wholesale dealer or a person delivering cigarettes or tobacco products in the regular course of business for a manufacturer, an agent or a licensed wholesale or retail dealer, shall be presumptive evidence that such person is a retail dealer.

8. "Package." The individual package, box or other container in or from which retail sales of cigarettes are normally made or intended to be made.

9. "Agent." Any person authorized to purchase and affix adhesive or meter stamps under this chapter who is designated as an agent by the commissioner of finance.

10. "Comptroller." The comptroller of the city.

11. "Commissioner of finance." The commissioner of finance of the city.

12. "City." The city of Staten Island.

13. "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.

14. "Cigar." Any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece. Cigar does not include a little cigar as defined in this section.

15. "Little cigar." Any roll of tobacco for smoking that is wrapped in leaf tobacco or in any substance containing tobacco and that weighs no more than four pounds per thousand or has a cellulose acetate or other integrated filter.

16. "Loose tobacco." Any product that consists of loose leaves or pieces of tobacco that is intended for use by consumers in a pipe, roll-your-own cigarette, or similar product or device.

17. "Smokeless tobacco." Any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

18. "Snus." Any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

19. "Tobacco product." Any product which contains tobacco that is intended for human consumption, including any component, part, or accessory of such product. Tobacco product shall include, but not be limited to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-own tobacco, snus, bidi, snuff, shisha, or dissolvable tobacco product. Tobacco product shall not include cigarettes or any product that has been approved by the United States food and drug administration for sale as a tobacco use cessation product or for other medical purposes and that is being marketed and sold solely for such purposes. "Tobacco products" shall not include research tobacco products.

20. "Shisha." Any product that contains tobacco and is smoked or intended to be smoked in a hookah or water pipe.

21. "Research tobacco product." A tobacco product or cigarette that is labeled as a research tobacco product, is manufactured for use in research for health, scientific, or similar experimental purposes, is exclusively used for such purposes by an accredited college, university or hospital, or a researcher affiliated with an accredited college, university or hospital, and is not offered for sale or sold to consumers for any purpose.

§ 11-1302 Imposition of tax. a. There is hereby imposed and shall be paid a tax on:

1. All cigarettes possessed in the city for sale except as provided in this section;

2. The use of all cigarettes in the city except as provided in this section;

3. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer, and that any agent, distributor or dealer who shall pay the tax to the commissioner of finance shall collect the tax from the purchaser or consumer. Such tax shall be at the rate of four cents for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be two cents for each five cigarettes or fraction thereof. Provided further, however, that on and after July second, two thousand two, such tax shall be at the rate of seventy-five cents for each ten cigarettes or fraction thereof, provided, however, that if a package of cigarettes contains more than twenty cigarettes, the rate of tax on the cigarettes in such package in excess of twenty shall be thirty-eight cents for each five cigarettes or fraction thereof. Such tax shall be imposed only once on the same package of cigarettes.

b. The tax imposed by this section shall not apply to:

1. The use, otherwise than for sale, of four hundred cigarettes or less brought into the city, on or in possession of, any person;

2. Cigarettes sold to the United States;

3. Cigarettes sold to or by a voluntary unincorporated organization of the armed forces of the United States operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States;

4. Cigarettes possessed in the city by any agent or wholesale dealer for sale to a dealer outside the city or for sale and shipment to any person in another state for use there, provided such agent or wholesale dealer complies with the regulations relating thereto.

c. The tax imposed under this section shall be in addition to any and all other taxes.

d. It shall be presumed that all sales or uses mentioned in this section are subject to tax until the contrary is established, and the

burden of proof that a sale or use is not taxable under this section shall be upon the vendor or the purchaser.

e. Except as provided in this section, the tax shall be advanced and paid by the agent or distributor. The agent shall be liable for the collection and payment of the tax to the commissioner of finance by purchasing from the commissioner of finance adhesive stamps of such design and denomination as may be prescribed by such commissioner, subject to the approval of the state commissioner of taxation and finance. The tax may also be paid by the use of such metering machines as are prescribed by the commissioner of finance subject to the approval of the state commissioner of taxation and finance.

f. Within twenty-four hours after liability for the tax on the use of cigarettes accrues each person liable for the tax shall file with the commissioner of finance a return in such form as the commissioner of finance may prescribe, together with a remittance of the tax shown to be due thereon.

g. Agents located within or without the city shall purchase stamps and affix them in the manner prescribed to packages of cigarettes to be sold within the city.

h. The amount of taxes advanced and paid by the agent or distributor as provided in this section shall be added to and collected as part of the sales price of the cigarettes.

i. The commissioner of finance, notwithstanding any other provision of this chapter, may, subject to the approval of the state commissioner of taxation and finance, provide by regulation that the tax imposed by this section shall be collected without the use of stamps.

§ 11-1302.1. Imposition of tax on tobacco products. a. In accordance with section one hundred ten of the public housing law, an excise tax on the sale of tobacco products is hereby imposed and shall be paid on all tobacco products possessed in the city for sale, except as provided under this section. It is intended that the ultimate incidence of and liability for the tax shall be upon the consumer. Any dealer or distributor who pays the tax to the commissioner of finance shall collect the tax from the purchaser or consumer. Such tax shall be at the rate of ten percent of the price floor for a package of the specified category of tobacco product, exclusive of sales tax, set forth in the following table, which shall be consistent with the price floors described in subdivision d of section 17-176.1 of the code of the preceding municipality:

| Tobacco Product | Price floor (excluding OTP and sales taxes) | Amount of OTP tax (excluding sales tax) |
|---|---|---|
| Cigar | $8.00 per cigar sold 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 |
| Little cigar | $10.95 per pack of 20 little cigars | $1.09 per pack |
| Smokeless tobacco | $8.00 per 1.2 oz. package 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 |

| | | |
|---|---|---|
| | any fraction thereof in excess of 1.2 oz. | fraction thereof in excess of 1.2 oz. |
| Snus | $8.00 per 0.32 oz. package plus $2.00 for each additional 0.08 oz. or any fraction thereof in excess of 0.32 oz. | $0.80 per 0.32 oz. plus an additional $0.20 for each 0.08 oz. or any fraction thereof in excess of 0.32 oz. |
| Shisha | $17.00 per 3.5 oz. package plus $3.40 for each additional 0.7 oz. or any fraction thereof in excess of 3.5 oz. | $1.70 per 3.5 oz. plus an additional $0.34 for for each 0.7 oz. or any fraction thereof in excess of 3.5 oz. |
| Loose tobacco | $2.55 per 1.5 oz. package plus $0.51 for each additional 0.3 oz. or any fraction thereof in excess of 1.5 oz. | $0.25 per 1.5 oz. package plus an additional $0.05 for each 0.3 oz. or any fraction thereof in excess of 1.5 oz. |

b. The tax imposed hereunder shall not apply to:

1. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district or other political subdivision of the state where it is the purchaser, user or consumer;

2. The United States of America, in so far as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph; and

5. Tobacco products possessed in the city by any dealer for sale outside the city or for sale and shipment to any person in another state for use there, provided such dealer complies with the regulations relating thereto.

c. Nothing in subdivision b of this section shall exempt sales by any shop or store operated by any college, university or other public or private institution for higher education from the taxes described in this section.

d. The tax imposed under this section shall be in addition to any and all other taxes.

e. It shall be presumed that all sales mentioned in this section are subject to tax until the contrary is established, and the burden of proof that a sale is not taxable under this section shall be upon the dealer or the purchaser.

f. 1. Except as provided in this subdivision, the tax shall be advanced and paid by the wholesale dealer. The wholesale dealer shall be liable for the collection and payment of the tax to the commissioner of finance as required under subdivision g of this section. The commissioner may require the wholesale dealer to keep tobacco products for which the tax has not yet been paid separately from tobacco products for which the tax has been paid. For purposes of this chapter, retention by the wholesale dealer of any tobacco products beyond the time prescribed for payment under this section, without having made the requisite payment, or storing any such products in violation of any separation requirements prescribed by the commissioner, shall be presumptive evidence that such tobacco products are possessed in violation of the provisions of this chapter.

2. Every retail dealer shall be liable for the tax on all tobacco products in his or her possession at any time, upon which tax has not been paid, and the failure of any retail dealer to produce and exhibit to the commissioner of finance or such commissioner's duly authorized representatives upon demand, an invoice by a licensed wholesale dealer for any tobacco products in his or her possession, shall be presumptive evidence the tax thereon has not been paid, that such retail dealer is liable for the tax thereon, and the tobacco products are possessed in violation of this chapter, unless evidence of such invoice or payment shall later be produced.

g. 1. Each wholesale dealer shall file with the commissioner of finance a return, on a form required by such commissioner, indicating the amount of tax due pursuant to this section and any other information the commissioner may require, on a monthly basis, or on such other regular interval as such commissioner may prescribe. Each wholesale dealer shall file the return on the twentieth day of the month following the end of the month or other interval covered by the return, unless the commissioner of finance prescribes a greater number of days following the end of the month or a different reporting interval. Each wholesale dealer shall pay the amount of tax due upon filing the return unless the commissioner prescribes a different date or time for such payment.

2. The commissioner of finance may:

(A) Authorize another person, including a distributor as defined in subdivision twelve of section four hundred seventy of the tax law, who is not a wholesale dealer, to advance and pay the tax imposed under this section;

(B) Exempt wholesale dealers from the requirements of this subdivision, upon such conditions as may be imposed by such commissioner, if he or she is satisfied the tax on the tobacco products has been or is being advanced and paid by another wholesale dealer or a distributor authorized under this subdivision.

h. The amount of taxes advanced and paid by the wholesale dealer pursuant to this section shall be added to and collected as part of the sales price of the tobacco products.

§ 11-1303 License. a. License required of wholesale and retail dealers. 1. It shall be unlawful for a person to engage in business as a wholesale or retail dealer without a license as prescribed in this section or subchapter one of chapter two of title twenty of the code of the preceding municipality, whichever is applicable.

2. It shall be unlawful for a person to permit any premises under such person's control to be used by any other person in violation of paragraph one of subdivision a of this section.

b. Application for license. 1. Wholesale tobacco license. In order to obtain a license to engage in business as a wholesale dealer, a person shall file application with the commissioner of finance for one license for each place of business that he or she desires to have for the sale of cigarettes or tobacco products in the city. Every application for a wholesale tobacco license shall be made upon a form prescribed and prepared by the commissioner of finance and shall set forth such information as the commissioner shall require. The commissioner of finance may, for cause, refuse to issue a wholesale tobacco license. Upon approval of the application, the commissioner of finance shall grant and issue to the applicant a wholesale tobacco license for each place of business within the city set forth in the application. Wholesale tobacco licenses shall not be assignable and shall be valid only for the persons in whose names such licenses have been issued and for the transaction of business in the places designated therein and shall at all times be conspicuously displayed at the places for which issued.

2. Retail tobacco license. In order to obtain a license to engage in business as a retail dealer, a person shall file application with the commissioner of consumer affairs and worker protection in accordance with the provisions of section 20-202 of the code of the preceding municipality.

c. Duplicate licenses. Whenever any license issued by the commissioner of finance under the provisions of this section is defaced, destroyed or lost, the commissioner of finance shall issue a duplicate license to the holder of the defaced, destroyed or lost license upon the payment of a fee of fifteen dollars. A duplicate retail dealer license may be obtained from the commissioner of consumer and worker protection as provided in section 20-204 of the code of the preceding municipality.

d. Suspension or revocation of licenses. (1) After a hearing, the commissioner of finance may suspend or revoke a wholesale tobacco license and the commissioner of consumer and worker protection, upon notice from the commissioner of finance, may suspend or revoke a retail tobacco license whenever the commissioner of finance finds that the holder thereof has failed to comply with any of the provisions of this chapter or any rules of the commissioner of finance prescribed, adopted and promulgated under this chapter.

(2) The commissioner of finance may also suspend or revoke a wholesale tobacco license in accordance with the requirements of any other sections of this code or any rules promulgated thereunder which authorizes the suspension or revocation of a wholesale tobacco license.

(3) The commissioner of consumer and worker protection may also suspend or revoke a retail tobacco license in accordance with the requirements of any other section of this code or any rules promulgated thereunder which authorize suspension or revocation of a retail tobacco license.

(4) Upon suspending or revoking any wholesale tobacco license, the commissioner of finance shall direct the holder thereof to surrender to the commissioner of finance immediately all wholesale tobacco licenses or duplicates thereof issued to such holder and the holder shall surrender promptly all such licenses to the commissioner of finance as directed. Before the commissioner of finance suspends or revokes a wholesale tobacco license or notifies the commissioner of consumer and worker protection of a finding of a violation of this chapter with respect to a retail tobacco license pursuant to paragraph one of this subdivision, the commissioner of finance shall notify the holder and the holder shall be entitled to a hearing, if desired, if the holder, within

ninety days from the date of such notification, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (A) serves a petition upon the commissioner of finance and (B) files a petition with the tax appeals tribunal for a hearing. After such hearing, the commissioner of finance, good cause appearing therefor, may suspend or revoke the wholesale tobacco license, and, in the case of a retail tobacco license, notify the commissioner of consumer and worker protection of a violation of this chapter or any rules promulgated thereunder. Upon such notification, the commissioner of consumer and worker protection may suspend or revoke a retail cigarette license as provided in subdivision b of section 20-206 of the code of the preceding municipality. The commissioner of finance may, by rule, provide for granting a similar hearing to an applicant who has been refused a wholesale cigarette license by the commissioner of finance.

e. Prohibited sales and purchases. No agent or dealer shall sell cigarettes or tobacco products to an unlicensed wholesale or retail dealer, or to a wholesale or retail dealer whose license has been suspended or revoked.

No dealer shall purchase cigarettes or tobacco products from any person other than a manufacturer or a licensed wholesale dealer.

f. Retail dealers. The commissioner of finance may, after hearing, issue an order prohibiting a retail dealer from selling cigarettes, for such period as the order shall specify, for failure to comply with any of the provisions of this chapter or any rules or regulations of the commissioner of finance prescribed, adopted and promulgated under this chapter.

g. License fees; numbering and registering of licenses; term. 1. The annual fee for a wholesale dealer's license shall be six hundred dollars, and the annual fee for a retail dealer's license shall be as provided in subdivision c of section 20-202 of the code of the preceding municipality.

2. Wholesale tobacco licenses shall be regularly numbered and duly registered.

3. Wholesale tobacco licenses shall expire on January thirty-first next succeeding the date of issuance unless sooner suspended or revoked.

§ 11-1304 Preparation and sale of stamps; commissions. a. The commissioner of finance shall, subject to the approval of the state tax commission, prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax imposed by this chapter, and may, from time to time, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. Such stamps shall be in the form of a single stamp for the payment of the tax imposed by this chapter or, in lieu thereof, a joint single stamp to be prepared and issued by the state of New York and the city for the payment of the tax imposed by this chapter and the taxes imposed by article twenty of the tax law. The commissioner of finance may make such arrangements with the state tax commission for the method of acquiring and the manner of sharing the costs of such joint single stamps as he or she deems appropriate. The commissioner of finance, subject to the approval of the state commissioner of taxation and finance, shall make provisions for the sale of such stamps at such

places as he or she may deem necessary, and may appoint fiscal agents for such purpose.

b. The commissioner of finance may appoint wholesale dealers of cigarettes and any other person within or without the city as agents to affix stamps to be used in paying the tax hereby imposed, but an agent shall at all times have the right to appoint the person in his or her employ who is to affix the stamps to any cigarettes under the agent's control. Whenever the commissioner of finance shall sell, consign or deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his or her services and expenses in affixing such stamps, and to retain out of the moneys to be paid by the agent for such stamps, a commission on the par value thereof. The commissioner of finance is hereby authorized to prescribe a schedule of commissions not exceeding five per centum, allowable to such agent for affixing such stamps; provided, however, that the commissioner of finance may authorize commissions to agents and temporary agents not exceeding ten per centum for a special period not exceeding fifteen days immediately following the enactment of this chapter to cover the initial stamping of packages of cigarettes. Such schedule shall be uniform for each type and denomination of stamp used, and may be on a graduated scale with respect to the number of stamps purchased. In the event that a joint stamp is issued, the commissions allowed shall be determined jointly by the state commissioner of taxation and finance and the commissioner of finance and shall be based on the full par value of such stamp. The extent to which the city and the state of New York shall bear the expense of such commissions shall be determined by agreement between the commissioner of taxation and finance and the commissioner of finance. The commissioner of finance may in his or her discretion permit an agent to pay for such stamps within thirty days after the date of sale, consignment or delivery of such stamps to such agents, and may require any such agent to file with the commissioner of finance a bond, issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in the state, in such amounts as the commissioner of finance may fix, to secure the payment of any sums from such agent pursuant to this chapter.

c. The commissioner of finance may redeem unused stamps lawfully in the possession of any person. No person shall sell or offer for sale any stamp issued under this chapter, except by written permission of the commissioner of finance. The commissioner of finance may prescribe rules and regulations concerning refunds, sales of stamps and redemptions under the provisions of this chapter.

d. (1) Except as provided in this subdivision, it shall be unlawful for any person to sell, offer for sale, possess or transport any affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions.

(2) Paragraph one of this subdivision shall not apply to:

(A) a person, other than a retail dealer, in possession of twenty or fewer affixed tax stamps;

(B) public officers or employees in the performance of their official duties requiring possession or control of affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions; or

(C) any person authorized by the commissioner of finance or the commissioner of the department of taxation and finance of the state of New York to perform law enforcement functions.

§ 11-1305 Affixation and cancellation of stamps; presumptions. a. Each agent shall affix to each package of cigarettes stamps evidencing

the payment of tax imposed by this chapter and shall cancel such stamps prior to delivery of such cigarettes to any dealer in the city, unless stamps have been affixed to such packages of cigarettes and cancelled before such agent received them.

b. Each dealer, other than an agent, in the city shall immediately upon the receipt of any cigarettes at his or her place of business mark in ink on each unopened box, carton or other container of such cigarettes the word "received" and the year, month, day and hour of such receipt and shall affix his or her signature thereto or shall mark them in any other manner prescribed by the commissioner of finance. In addition, each retail dealer shall, within twenty-four hours after receipt of any cigarettes at his or her place of business and prior to exposing for sale or sale by such retail dealer of such cigarettes, open such box, carton or other container and, unless such stamps have been previously affixed, immediately notify the dealer from whom he or she purchased such cigarettes and arrange for the replacement by the dealer of such cigarettes by cigarettes with such stamps affixed within twenty-four hours.

c. Stamps shall be cancelled in the manner prescribed by regulation.

d. Whenever any cigarettes are found in the place of business of a dealer without the stamps affixed and cancelled, or not marked as having been received within the preceding twenty-four hours, the prima facie presumption shall arise that such cigarettes are kept therein in violation of the provisions of this chapter.

e. Stamps shall be affixed to each package of cigarettes of an aggregate denomination not less than the amount of the tax upon the contents therein, and shall be affixed in such manner as to be visible to the purchaser.

§ 11-1306 Possession and transportation of unstamped cigarettes. Every person who shall possess or transport upon the public highways, roads or streets of this city more than four hundred cigarettes in unstamped packages, shall be required to have in his or her actual possession invoices or delivery tickets for such cigarettes. All such invoices or delivery tickets shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser and the quantity and brands of the cigarettes transported. The absence of such invoices or delivery tickets shall be prima facie evidence that such person is a dealer in cigarettes in the city and subject to the provisions of this chapter.

§ 11-1307 Records to be kept; examination. a. 1. At the time of delivering cigarettes to any person in the city, each agent or wholesale dealer shall make a true duplicate invoice showing the date of delivery, the number of packages and the number of cigarettes contained therein in each shipment of cigarettes delivered, and the name of the purchaser to whom delivery is made, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance. Each dealer shall procure and retain invoices showing the number of packages and the number of cigarettes contained therein in each shipment of cigarettes received by such dealer, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance.

2. At the time of delivering tobacco products to any person in the city, each wholesale dealer shall make a true duplicate invoice showing the date of delivery, the number of packages and the number of tobacco products contained therein as well as any tobacco products not in packages in each shipment of tobacco products delivered, and the name of the

purchaser to whom delivery is made and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance. Each dealer shall procure and retain invoices showing the number of packages and the number of tobacco products contained therein as well as any tobacco products not in packages in each shipment of tobacco products received by such dealer, the date thereof, and the name of the shipper, and shall retain the same for a period of three years subject to the use and inspection of the commissioner of finance.

3. Each dealer shall retain any other records and in such form as may be required by the commissioner of finance indicating proof of the payment of the tax imposed under section 11-1302.1 of this chapter. Any failure to provide such records upon request by the commissioner of finance or such commissioner's duly authorized representatives shall be presumptive evidence that the dealer has violated the provisions of this chapter.

b. The commissioner of finance by regulation may provide that whenever cigarettes or tobacco products are shipped into the city, the railroad company, express company, trucking company, or carrier transporting any shipment thereof shall file with the commissioner of finance a copy of the freight bill within ten days after the delivery in the city of each shipment.

c. All dealers shall maintain and keep for a period of three years such other records of cigarettes or tobacco products received or sold within the city as may be required by the commissioner of finance. All wholesale dealers shall maintain and keep for a period of three years such other records of cigarettes or tobacco products delivered within the city.

d. Without limiting the powers granted the commissioner of consumer and worker protection pursuant to title twenty of the code of the preceding municipality and any rules promulgated thereunder, the commissioner of finance or the commissioner's duly authorized representatives are hereby authorized to examine the books, papers, invoices and other records, and stock of cigarettes or tobacco products in and upon any premises where the same are placed, stored and sold, and equipment of any such agent or dealer pertaining to the sale and delivery of cigarettes or tobacco products taxable under this chapter. To verify the accuracy of the tax imposed and assessed by this chapter, each such person is hereby directed and required to give to the commissioner of finance or the commissioner's duly authorized representatives, the means, facilities and opportunity for such examinations as are herein provided for and required.

e. The commissioner of finance shall investigate any failure to pay the tax required by this chapter or any other failure to comply with this chapter or the rules or regulations promulgated thereunder, and shall take the necessary steps to enforce compliance therewith.

§ 11-1308 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to require the filing of reports by agents and/or dealers;

2. To prescribe the method and the means to be used in the cancellation of stamps;

3. To fix the denominations and the method of sale of stamps;

4. To delegate his or her powers to a deputy or other employee or employees of the department of finance;

5. To extend, for cause shown, the time for filing any return or reports for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

6. To assess, determine, revise and adjust the taxes imposed under this chapter;

7. To request information from the state commissioner of taxation and finance, the treasury department of the United States or the taxing officials of any other state or city that imposes a similar tax to any tax imposed by this chapter, and to afford information to such commission, department or other taxing official, any other provision of this chapter to the contrary notwithstanding;

8. To enter into an arrangement with the state commissioner of taxation and finance with respect to cooperative collection, auditing or administration of the taxes imposed by this chapter and the taxes imposed by article twenty of the tax law of the state of New York.

9. To prescribe forms to be filled out by the vendor or purchaser, or both, in each instance in which a sale is made by an agent or wholesale dealer to a person outside the state or the city or to a dealer in the city for purposes of resale outside the state or the city.

10. To appoint any dealer as a temporary agent to buy and affix stamps for a period not in excess of fifteen days.

11. In furtherance of the purposes of paragraph three of subdivision a of section 11-1302 of this chapter, to provide by appropriate regulation for the maintenance of such differentials in wholesale and retail prices of cigarettes sold by any vendor, other than the manufacturer, so as to reflect the amounts of tax attributable to the tar and nicotine content of cigarettes sold. In so doing he or she may use and consider the factory price of various brands of cigarettes. In addition, the commissioner may consider the mode or method by which retail sales are effected and limit his or her regulations so as to affect any one or more or all of such modes or methods.

§ 11-1309 Notifying taxpayers of assessments. a. The owner of any lot, piece or parcel of land in the city of Staten Island or any person interested in such lot, piece or parcel, may file with the bureau of city collections a statement containing a brief description of such land, together with the section, block and lot number thereof, or such other designation as at the time is established by the department of finance, and a statement of the applicant's interest therein, together with a written request that such lot, piece or parcel of land be registered in such bureau, in the name of the applicant. In such statement the applicant shall designate a post office address to which notifications addressed to such applicant shall be sent. A brief description of such lot, piece or parcel of land corresponding to the description thereof in the statement so filed, together with the name of the applicant and his or her post office address and the date of such application, shall thereupon be registered in the offices of such bureau as hereinafter provided.

b. As soon as any assessment for a local improvement shall have been confirmed, including assessments confirmed by a court of record, and the list thereof shall have been entered and filed in the bureau of city collections, such assessment list shall be examined and thereupon, within twenty days after such entry there shall be mailed a notice addressed to each person in whose name any lot, piece or parcel of land, affected by such assessment, is registered, at the post office address registered in the records of such bureau, which notice shall contain the brief description of the lot, piece or parcel of land registered in the name

of the person to whom such notice is addressed, together with the amount assessed thereon, date of entry, and title of the improvement for which such assessment is made, and a statement of the rate of interest or penalty imposed for the nonpayment of such assessment, and the date from which the interest or penalty will be computed. Failure to comply with the provisions of this section, however, shall in no manner affect the validity or collectibility of any assessment heretofore or hereafter confirmed, nor shall any claim arise or exist against the comptroller, the commissioner of finance, the city collector or any officer of the city by reason of such failure.

c. The city collector shall for the purpose of this section provide appropriate records for each section of the city as the same shall appear upon the tax maps of the city.

§ 11-1310 Determination of tax. If any person fails to pay the tax, or to file a return required by this chapter or if a return, when filed, is insufficient and the maker fails to file a corrected or sufficient return within ten days after the same may be required by notice from the commissioner of finance, the commissioner of finance shall determine the amount of tax due from such information as may be obtainable or on the basis of external indices, such as number of cigarettes purchased or sold, number of tobacco products purchased or sold, stock on hand, volume of sales by similar dealers or other factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed shall, within ninety days of the giving of such notice, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the person liable for the tax has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance shall of his or her own motion redetermine such tax. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person liable for the tax and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if instituted by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision; provided however, that if such decision regards the tax imposed under section 11-1302.1 of this chapter, such proceeding must be instituted by the person against whom the tax was assessed within thirty days after the giving of the notice of such tax appeals tribunal decision. Such proceeding shall not be instituted by a person liable for the tax unless the amount of any tax sought to be reviewed with interest and penalties thereon, if any, shall have first been deposited with the commissioner of finance and an undertaking filed with the commissioner of finance in such amount and with such sureties as a justice of the

supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding.

§ 11-1311 Refunds. a. In the manner provided in this subdivision the commissioner of finance shall refund, without interest, any tax, interest or penalty erroneously, illegally or unconstitutionally collected or paid. In addition, whenever any cigarettes upon which stamps have been affixed have been sold and shipped to a dealer outside the city for sale there or to any person in another state for use there, or have become unfit for use and consumption or unsalable, or have been destroyed, the dealer shall be entitled to a refund of the amount of tax paid, less the applicable commission, with respect to such cigarettes.

In any event no refund shall be granted unless application to the commissioner of finance therefor is made within two years after the stamps were affixed to such cigarettes or the tax was paid, except if a person has consented in writing to an extension of the period for assessment of additional tax pursuant to subdivision c of section 11-1315 of this chapter, and such consent is given within the two-year period for making a refund application provided in this subdivision, the period for making a refund application shall not expire prior to six months after the expiration of the period within which an assessment could be made pursuant to such consent or any extension thereof.

Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reasons therefor and give notice thereof to the applicant in writing. A person shall not be entitled to a hearing in connection with such application for a refund if such person has already had a hearing or had been given the opportunity of a hearing as provided in section 11-1310 of this chapter or has failed to avail himself or herself of the remedies therein provided. No refund shall be made of a tax, interest or penalty paid pursuant to a determination of the commissioner of finance as provided in section 11-1310 of this chapter, unless the tax appeals tribunal, after a hearing as in said section provided or the commissioner of finance, of his or her own motion, shall have reduced the tax or penalty, or it shall have been established in a proceeding, pursuant to article seventy-eight of the civil practice law and rules that such determination was erroneous, illegal, unconstitutional or otherwise improper, in which event a refund without interest shall be made as provided upon the determination of such proceeding. Any determination of the commissioner of finance denying a refund pursuant to this subdivision shall be final and irrevocable unless the applicant for such refund, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing.

Such petition for a refund made as provided in this subdivision shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding munici-

pality. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to maintain a proceeding under article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc, provided, however, that such proceeding is instituted within four months after such decision, provided however, that if such decision regards the tax imposed under section 11-1302.1 of this chapter, such proceeding must be instituted within thirty days after such decision, and provided, further, in the case of an application by a person liable for the tax, that a final determination of tax due was not previously made, and that an undertaking shall first be filed by such person with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

b. If the commissioner of finance is satisfied that any dealer is entitled to a refund the commissioner shall issue to such dealer stamps of sufficient value to cover the refund or to make such refund.

§ 11-1312 Reserves. In cases where the taxpayer has applied for a refund and has instituted proceedings under article seventy-eight of the civil practice law and rules to review a determination adverse to the taxpayer on his or her application for refund or has deposited the amount of tax assessed in connection with proceedings under section 11-1310 of this chapter, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-1313 Remedies exclusive. The remedies provided by sections 11-1310 and 11-1311 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on an application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received, or by any legal or equitable action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1310 of this chapter.

§ 11-1314 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance, bring or cause to be brought an action to enforce the payment of the same on behalf of the city in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax, interest or penalties might be satisfied and that any such tax, interest or penalty will not be paid when due, he or she may declare such tax, interest or penalty to be immediately due and payable and may issue a warrant immediately.

b. In addition to all other remedies for the collection of any taxes, penalties or interest due under the provisions of this chapter, the commissioner of finance may with respect to any tax imposed under section 11-1302 of this chapter or any penalties or interest related thereto issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalties and interest and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the taxes, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the city sheriff shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1315 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to

levy, appraise, assess, determine or enforce the collection of any tax, interest or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a person has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance or, where relevant, the tax appeals tribunal is authorized to provide by regulation the extent to which the provisions of this subdivision with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery

service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-1317 Penalties and interest. a. (1) Any person failing to pay a tax payable under section 11-1302 of this chapter when due shall be subject to a penalty of fifty per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by section 11-1302 of this chapter.

(2) Any person failing to pay a tax payable under section 11-1302.1 of this chapter when due shall be subject to a penalty of three hundred per centum of the amount of tax due, but the commissioner of finance, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues from the tax imposed under section 11-1302.1 of this chapter. Unpaid penalties may be enforced in the same manner as the tax imposed by section 11-1302.1 of this chapter.

b. (1) In addition to any other penalty imposed by this section, the commissioner of finance may (a) impose a penalty of not more than one hundred dollars for each two hundred cigarettes or fraction thereof in excess of one thousand cigarettes in unstamped or unlawfully stamped packages in the possession or under the control of any person and (b)

impose a penalty of not more than two hundred dollars for each ten affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions, or fraction thereof, in excess of one hundred affixed or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions in the possession or under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

(2) The penalties imposed by this paragraph may be imposed by the commissioner of finance in addition to any other penalty imposed by this section, but in lieu of the penalties imposed by subparagraph (a) of paragraph one of this subdivision: (a) not less than thirty dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of one thousand cigarettes but less than or equal to five thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; (b) not less than seventy-five dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of five thousand cigarettes but less than or equal to twenty thousand cigarettes in unstamped or unlawfully stamped packages knowingly in the possession or knowingly under the control of any person; and (c) not less than one hundred dollars but not more than two hundred dollars for each two hundred cigarettes, or fraction thereof, in excess of twenty thousand cigarettes in unstamped or unlawfully stamped packages, knowingly in the possession or knowingly under the control of any person. Such penalty shall be determined as provided in section 11-1310 of this chapter, and may be reviewed only pursuant to such section. Such penalty may be enforced in the same manner as the tax imposed by this chapter. The commissioner of finance, in his or her discretion, may remit all or part of such penalty. Such penalty shall be paid and disposed of in the same manner as other revenues under this chapter.

c. (1) The possession within the city of more than four hundred cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are subject to tax as provided by this chapter.

(2) Nothing in this section shall apply to common or contract carriers or warehousemen while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his or her employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, nor to persons whose possession is for the purpose of aiding police officers in performing their duties.

d. (1) If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to paragraph two of this subdivision, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if

the amount thereof is less than one dollar. The interest imposed by this subdivision shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest may be enforced in the same manner as the tax imposed by this chapter.

(2) (A) The commissioner of finance shall set the rate of interest to be paid pursuant to paragraph one of this subdivision, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in subparagraph (B) of this paragraph but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(B) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

e. Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-1318 Disposition of revenues. a. All revenues resulting from the imposition of the tax under section 11-1302 of this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, except that, after the payment of refunds with respect to such tax, effective on and after July second, two thousand two, forty-six and one-half percent and, effective on and after April first, two thousand three, forty-six percent of such revenues, including taxes, interest and penalties, collected or received shall be paid to the state comptroller.

(b) All revenues resulting from the imposition of the tax under section 11-1302.1 of this chapter during a fiscal year, including any interest and penalties, shall be paid into the treasury of the city in accordance with section one hundred twelve of the public housing law, and shall be payable from the city to the New York city housing authority in such fiscal year.

§ 11-1319 Construction and enforcement. Section 11-1302 and the provisions of this chapter related thereto shall be construed and enforced in conformity with chapter two hundred thirty-five of the laws of nineteen hundred fifty-two. Section 11-1302.1 and the provisions of this chapter related thereto shall be construed and enforced in conformity with subdivision e of section one hundred ten and sections one hundred eleven, one hundred twelve and one hundred thirteen of the public housing law.

## CHAPTER 14
## TAX ON TRANSFER OF TAXICAB LICENSES

§ 11-1401 Definitions. When used in this chapter the following terms shall mean or include:

1. "City." The city of Staten Island.
2. "Commissioner of finance." The commissioner of finance of the city of Staten Island.
3. "Comptroller." The comptroller of the city of Staten Island.
4. "Consideration." The total price paid or agreed to be paid for the transfer of a taxicab license or interest therein, whether paid or agreed to be paid in money, property, or any other thing of value, including the cancellation or discharge of an indebtedness or obligation, without any deduction whatsoever.
5. "Person." 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, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.
6. "Taxi and limousine commission." The city of Staten Island taxi and limousine commission.
7. "Taxicab." Any motor vehicle carrying passengers for hire in the city, duly licensed as a taxicab by the taxi and limousine commission, and permitted to accept hails from passengers in the street.
8. "Taxicab license." A license issued by the taxi and limousine commission to operate a taxicab.
9. "Taxpayer." Any person subject to tax under this chapter.
10. "Transfer." Any transfer of interest, whether or not such interest constitutes title, or possession, or both, exchange or barter, rental, lease, or license to use, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor.
11. "Transferee." The person to whom a taxicab license or interest therein is transferred, in a transfer as defined in subdivision ten of this section.
12. "Transferor." The person who transfers a taxicab license or interest pursuant to this chapter, in a transfer as defined in subdivision ten of this section.
13. "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.

§ 11-1402 Imposition of tax. a. On and after March twenty-first, two thousand seventeen, there is hereby imposed and there shall be paid a tax on each transfer of a taxicab license or interest therein, at the rate of one-half percent of the consideration given for such transfer.

b. Where there is a transfer of the economic interest in a taxicab license or interest therein, effected by the transfer of shares of stock of a corporation which hold such taxicab license or interest therein or by the transfer of an interest or interests in a partnership or association which holds such taxicab license or interest therein, such transfer of shares of stock or of an interest or interests in a partnership or association shall be treated as a transfer of the taxicab license or interest therein, and shall be subject to the tax imposed by subdivision a of this section.

c. Notwithstanding any other provision of this chapter, the tax imposed hereby shall not apply to a transfer made pursuant to a bona fide written contract or agreement made and executed prior to July first, nineteen hundred eighty, provided such contract or agreement is registered with the taxi and limousine commission prior to July first, nineteen hundred eighty, and provided further that one or more payments were made pursuant to such contract or agreement on or before June twentieth, nineteen hundred eighty.

d. Where a taxicab or any other property is transferred to a transferee in conjunction with the transfer of a taxicab license or interest therein, the tax imposed by this section shall be computed on the total consideration for the transfer of such license or interest therein and the taxicab or other property so transferred, less the fair market value of such taxicab or other property.

e. The tax imposed by this chapter shall be in addition to any and all other taxes.

§ 11-1403 Payment of tax. The tax imposed by this chapter shall be paid by the transferee to the taxi and limousine commission, as agent of the commissioner of finance, at the time of approval of such transfer by the taxi and limousine commission, but in no event later than thirty days following the transfer. The transferor shall also be liable for the payment of such tax at such time in the event that the amount of tax due is not paid by the transferee. Notwithstanding any other provision of law to the contrary, no transfer of a taxicab license or interest therein shall be approved or effective until the tax imposed by this chapter has been paid. All moneys received as such payments by the taxi and limousine commission during any day shall be transmitted to the commissioner of finance at the close of business on such day or at such other time as the commissioner of finance may require.

§ 11-1404 Returns. a. A joint return shall be filed by both the transferee and the transferor. Such return shall be filed at the time of payment of any tax imposed pursuant to this chapter, and such filing shall be accomplished by delivering the return to the taxi and limousine commission for transmittal to the commissioner of finance. The commissioner of finance shall prescribe the form of the return and the information which it shall contain. The return shall be signed under oath by both the transferee and the transferor. Where either the transferee or the transferor has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or file a separate return shall be subject to the penalties applicable to a person who has failed to file a return, and the period of limitations for assessment of tax or of additional tax shall not apply to such party.

b. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

c. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return required by this chapter is not filed, or if a return, when filed, is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§ 11-1405 Exemptions. a. The tax imposed under this chapter shall not be imposed on any transaction by or with the following:

1. The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or Canada, or political subdivisions where it is the purchaser, user or consumer;

2. The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;

3. The United Nations or other international organizations of which the United States of America is a member; and

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

b. The tax imposed by this chapter shall not apply to the transfer of a taxicab license or interest therein by means of a lease, license or other rental arrangement, where the term of such lease, license or other rental arrangement, including the maximum period for which it can be extended or renewed, does not exceed six months.

§ 11-1406 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from external indices and such other information as may be obtainable. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one

hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-1407 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. Such application may be made by the transferee or transferor who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of this title and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made pursuant to this section, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one

hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review a decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, or penalty which had been determined to be due pursuant to the provisions of section 11-1406 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1406 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing, or on the commissioner's own motion, or, is such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to be overpaid.

§ 11-1408 Reserves. In cases where the transferee or transferor has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to the transferee or transferor on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decisions adverse to the city.

§ 11-1409 Remedies exclusive. The remedies provided by sections 11-1406 and 11-1407 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if the taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1406 of this chapter.

§ 11-1410 Proceedings to recover tax. a. Whenever any transferee or transferor shall fail to pay any tax, penalty or interest imposed by

this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such transferee or transferor subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any such tax or penalty will not be paid when due, the commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the sheriff to levy upon and sell the real and personal property of the transferee or transferor or other person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant the sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk or any part of the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

d. Whenever, the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by subdivision c of this section, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

e. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1411 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding ninety days; and to compromise disputed claims in connection with the taxes imposed under this chapter;

3. To request information from the taxi and limousine commission, the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford returns, reports and other information to such taxi and limousine commission, tax commission or treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions hereunder to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe the methods for determining the consideration subject to the tax, and if there is a transfer of a taxicab or other property in conjunction with the transfer of a taxicab license or interest therein, to prescribe rules and methods for determining the fair market value of such taxicab or other property;

6. To require any transferee or transferor to keep such records, and for such lengths of time as may be required for the proper administration of this chapter and to furnish such records to the commissioner of finance or the taxi and limousine commission upon request;

7. To assess, determine, revise and adjust the taxes imposed under this chapter.

§ 11-1412 Administration of oaths and compelling testimony. a. The commissioner of finance, the employees or agents duly designated by him

or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-1413 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-1406 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty

percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest

full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid or that information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-1414 Returns to be secret. a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of finance, the chairperson of the taxi and limousine commission, the tax appeals tribunal or any officer or employee of the department of finance or taxi and limousine commission or the tax appeals tribunal, to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed to prohibit the delivery to a transferee or transferor or to the duly authorized representative of either of them of a certified copy of any return filed in connection with the tax imposed by this chapter; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto to the United States of America or any department thereof, the state of New York or any department thereof, the city of Staten Island or any department thereof provided the same is required for official business; nor to prohibit the inspection for official business of such returns by the chairperson of the taxi and limousine commission, the corporation counsel or other legal representatives of the city or by the district attorney of Richmond county; nor to prohibit the publication of statistics so

classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-1415 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter, in any application made by such person, or in the records maintained by the taxi and limousine commission, or, if no return has been filed or application made or address found in the records of the taxi and limousine commission, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date,

delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which such provisions with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for

purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-1416 Construction and enforcement. This chapter shall be construed and enforced in conformity with subdivision (j) of section twelve hundred one of the tax law.

§ 11-1417 Disposition of revenues. All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenue may be expended unless appropriated in the annual budget of the city.

## CHAPTER 16
## TAX ON CONTAINERS

§ 11-1601 Definitions. When used in this chapter, the following terms shall mean and include:

1. "Person." 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 thereof.

2. "Container." Any article, thing or contrivance made in whole or in part of rigid or semi-rigid plastic, including, but not limited to, barrels, baskets, bottles, boxes, cartons, carrying cases, crates, cups, cylinders, drums, jars, jugs, pails, pots, trays, tubs, tubes, tumblers, and vessels, intended for use in packing or packaging any product intended for sale:

(a) Metal containers and paperboard or fiber containers which have been impregnated, lined or coated with plastic or other materials shall be considered to be classified as metal containers and paperboard containers, respectively;

(b) Paperboard or fiber containers with fastenings, tops or bottoms made of plastic shall be classified as paperboard or fiber containers;

(c) Plastic caps that are easily, readily, usually, and customarily separated from the container before disposal shall not be considered part of the container.

3. "Recycled material." Component materials which have been derived from previously used material or from new or old scrap material.

4. "Taxable period." Such calendar period prescribed for filing returns by this chapter or by the commissioner of finance.

5. "Retail sale" or "sale at retail." A sale to any person for any purpose other than for resale as such or as a physical component part of tangible personal property.

6. "Sale." The sale or furnishing of a container by a seller or supplier to a retailer.

7. "Seller or supplier." Any person who sells containers to a retailer.

8. "Retailer." Any person who purchases containers, whether filled or unfilled, for the purpose of using them in connection with and as part of sales at retail or who receives them as containers of products intended for sale at retail.

9. "City." The city of Staten Island.

10. "Commissioner of finance." The commissioner of finance of the city.

11. "Comptroller." The comptroller of the city.

§ 11-1602 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, the commissioner is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying chapter and the purposes thereof;

2. To extend, for cause shown, the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties but not interest computed at the rate of six per cent per annum; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate the commissioner's functions under this section to an assistant commissioner or deputy commissioner in the department of finance or to any employee or employees of the commissioner of finance;

5. To prescribe methods for determining the containers sold or supplied or purchased and to determine which are taxable and nontaxable;

6. To require sellers and suppliers and retailers within the city to keep detailed records with respect to containers bought, sold, used, manufactured or produced, and stock and production records with respect to such containers whether or not subject to the tax imposed by this chapter, and to furnish any information with respect thereto upon request to the commissioner of finance;

7. To assess, determine, revise and readjust the taxes imposed under this chapter.

§ 11-1603 Administration of oaths and compelling testimony. a. The commissioner of finance or the commissioner's employees or agents duly designated and authorized by the commissioner shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the commissioner's duties hereunder and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance under this chapter.

c. Any person who shall refuse to testify or to produce books or records or who shall testify falsely in any material matter pending before the commissioner of finance under this chapter shall be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment.

d. The officers who serve the summons or subpoena of the commissioner of finance and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided. Such officers shall be the city sheriff and the city sheriff's duly appointed deputies or any officers or employees of the commissioner of finance, designated to serve such process.

§ 11-1604 Imposition of tax. 1. On and after July first, nineteen hundred seventy-one, there is hereby imposed within the city and there shall be paid a tax upon every sale of a plastic container at the rate of two cents for each container sold.

2. A credit shall be allowed against the taxes imposed by this chapter of one cent for each taxable container if manufactured with a minimum of thirty percent of recycled material.

§ 11-1605 Presumptions and burden of proof. For the purpose of proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all sales of plastic containers are taxable, and not entitled to any credit allowed against the taxes imposed. Such presumptions shall prevail until the contrary is established and the burden of proving the contrary shall be upon the taxpayer.

§ 11-1606 Payment of the tax. The tax imposed pursuant to this chapter shall be paid by the seller or supplier. However, where the tax has not been paid on a sale by such seller or supplier, the retailer shall be liable for tax thereon upon purchasing the container. Should sellers and suppliers having no business situs in the city, who sell containers to retailers within the city, pay the tax, the retailer purchasing the containers shall not be liable for the tax.

§ 11-1607 Records to be kept. Every seller or supplier and every retailer shall keep records of all plastic containers taxed pursuant to this chapter and of all purchases and sales thereof and of the taxes due and payable on the sale or on the purchase thereof, in such form as the commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or the commissioner's duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

§ 11-1608 Exemptions. 1. The following shall be exempt from the payment of the tax imposed by this chapter:

(a) The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or Canada, or political subdivisions where it is the purchaser, user or consumer;

(b) The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation where it is the purchaser, user or consumer;

(c) The United Nations or other international organizations of which the United States of America is a member; and

(d) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

2. The following containers shall be exempt from the tax imposed by this chapter: a. Containers sold or furnished containing products intended for use in manufacturing processes and not for final retail sale.

b. Containers used as receptacles for food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including: (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith, other than coffee, tea and cocoa, and (iv) beer, wine or other alcoholic beverages.

§ 11-1609 Returns. 1. Every seller or supplier shall file with the commissioner of finance a return of containers sold and of the taxes due and payable thereon for the period from July first, nineteen hundred seventy-one until the last day of September, nineteen hundred seventy-one and thereafter for each of the four-monthly periods ending on the last day of January, May and September of each year.

2. Every retailer shall file with the commissioner of finance a return of containers purchased by such retailer from sellers or suppliers having no situs within the city and of the taxes due thereon for the same periods provided in subdivision one of this section.

3. The returns shall be filed within twenty days after the end of the periods covered thereby. The commissioner of finance may permit or require returns to be made for other periods and upon such dates as the commissioner may specify. If the commissioner of finance deems it necessary in order to insure the payment of the tax imposed by this chapter, the commissioner may require returns to be made for shorter periods than those prescribed pursuant to the provisions of this subdivision and upon such dates as he or she may specify.

4. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as the commissioner may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

5. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of finance shall take the necessary steps to enforce the filing of such a return or a corrected return.

§ 11-1610 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as volume of sales, inventories, purchases of containers, or of raw materials, production figures, or other factors. Notice of such determination shall be given to the person liable for the collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after giving notice of such determination, shall apply to the commissioner of finance for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. After such hearing the commissioner of finance shall give notice of his or her determination to the person against whom the tax is assessed. The determination of the commissioner of finance shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such determination. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the applicant such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the applicant shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-1611 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made by the commissioner of finance, the commissioner shall state his or her reasons therefor in writing. Such application may be made by the seller or supplier or the retailer or other person who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. An application for a refund or credit made as herein provided shall be deemed an application for revision of any tax, penalty or interest complained of. If the commissioner of finance, prior to any hearing held, initially denies the application for refund, the commissioner shall give notice of such determination of denial to the applicant. Such determination shall be final and irrevocable unless the applicant, within thirty days after the giving of notice of such determination, shall apply to the commissioner of finance for a hearing, or unless the

commissioner of finance of his or her own motion shall redetermine the same. After such hearing the commissioner of finance shall give notice of his or her determination to the applicant, who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such determination, and provided that a final determination of tax was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner shall pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-1610 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-1609 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the commissioner of finance after a hearing or of the commissioner's own motion, or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-1612 Reserves. In cases where the seller or supplier or the retailer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-1613 Remedies exclusive. The remedies provided by sections 11-1610 and 11-1611 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if such taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-1610 of this chapter.

§ 11-1614 Proceedings to recover tax. a. Whenever any seller or supplier or retailer or other person shall fail to pay any tax, penalty or interest imposed by this chapter, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such seller or supplier or

retailer or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied, and that any such tax, penalty or interest will not be paid when due, the commissioner of finance may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding the city sheriff to levy upon and sell the real and personal property of the seller or supplier or retailer or other person liable for the tax, which may be found within the city, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to the commissioner of finance the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant the city sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever a seller or supplier or the retailer shall make a sale, transfer, or assignment in bulk of any part of the whole of his or her fixtures, or of his or her stock of merchandise, or of stock or merchandise and of fixtures pertaining to the conduct or operation of business of the seller or supplier or the retailer, otherwise than in the ordinary course of trade and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the opening paragraph of this subdivision, or whenever the commissioner of finance shall

inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or chooses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or chooses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-1615 Penalties and interest. a. Any person failing to file a return or to pay any tax to the commissioner of finance within the time required by this chapter shall be subject to a penalty of five percent of the amount of tax due; plus interest at the rate of one percent of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the commissioner of finance if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Such penalties and interest shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

b. Any seller or supplier or any retailer or any officer of a corporate seller or supplier or retailer, failing to file a return as required by this chapter, or filing or causing to be filed or making or causing to be made or given or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this chapter which is willfully false, and any seller or supplier or any retailer or any officer of a corporate seller or supplier or retailer failing to keep the records required by subdivision six of section 11-1602 of this chapter, shall, in addition to the penalties under this subdivision or elsewhere prescribed, be guilty of a misdemeanor, punishment for which shall be a fine of not more than one thousand dollars or imprisonment for not more than one year, or both such fine and imprisonment. It shall not be any defense to a prosecution under this subdivision that the failure to file a return or that the actions or failures to act mentioned in this subdivision was unintentional or not willful.

c. The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, or that infor-

mation has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

§ 11-1616 Return to be secret. a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, any officer or employee of the department of finance, any person engaged or retained on an independent contract basis or any person who, pursuant to this section is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner any information contained in or relating to any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing under this subdivision shall be construed to prohibit the delivery to a taxpayer or such taxpayer's duly authorized representative of a certified copy of any return filed in connection with such taxpayer's tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, the United States of America or any department thereof, to the state of New York or any department thereof, or to any agency or department of the city of Staten Island, provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of Richmond county; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. Any violation of subdivision a of this section shall be punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, in the discretion of the court, and if the offender be an officer or employee of the city he or she shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

§ 11-1617 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by such person pursuant to the provisions of this chapter or in any application made by such person or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to

levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed under this section for assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

§ 11-1618 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter three hundred ninety-nine of the laws of nineteen hundred seventy-one, pursuant to which it is enacted.

## CHAPTER 17
## CITY PERSONAL INCOME TAX ON RESIDENTS

### SUBCHAPTER 1
### GENERAL

§ 11-1701 Imposition of tax. General. A tax is hereby imposed on the city taxable income of every city resident individual, estate and trust determined in accordance with the rates set forth in subdivision (a) of this section for taxable years beginning before two thousand twenty-seven, and in accordance with the rates set forth in subdivision (b) of this section for taxable years beginning after two thousand twenty-six. Provided, however, that if, for any taxable year beginning after two thousand twenty-six, the rates set forth in such subdivision (b) are rendered inapplicable and the rates set forth in such subdivision (a) are rendered applicable, then the tax for such taxable year shall be at the rates provided under subparagraph (A) of paragraphs one, two and three of such subdivision (a).

Notwithstanding the opening paragraph of this section, for taxable years beginning after two thousand two and before two thousand six, a tax is hereby imposed on the city taxable income of every city resident individual, estate and trust determined in accordance with the rates set forth in subdivision (g) of this section and in accordance with the provisions of subdivision (h) of this section. During any taxable year beginning after two thousand two and before two thousand six, in which the tax imposed pursuant to this section is determined in accordance with subdivisions (g) and (h) of this section, the rates set forth in subdivisions (a) and (b) of this section shall be inapplicable, and the tax imposed pursuant to section 11-1704.1 of this chapter shall be suspended.

(a) Rate of tax. A tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the city taxable income of

every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.7% of the city taxable income |
| Over $21,600 but not over $45,000 | $583 plus 3.3% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,355 plus 3.35% of excess over $45,000 |
| Over $90,000 | $2,863 plus 3.4% of excess over $90,000 |

(B) For taxable years beginning after two thousand fourteen and before two thousand seventeen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.55% of the city taxable income |
| Over $21,600 but not over $45,000 | $551 plus 3.1% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,276 plus 3.15% of excess over $45,000 |
| Over $90,000 but not over $500,000 | $2,694 plus 3.2% of excess over $90,000 |
| Over $500,000 | $16,803 plus 3.4% of excess over $500,000 |

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.55% of the city taxable income |
| Over $21,600 but not over $45,000 | $551 plus 3.1% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,276 plus 3.15% of excess over $45,000 |
| Over $90,000 but not over $500,000 | $2,694 plus 3.2% of excess over $90,000 |
| Over $500,000 | $15,814 plus 3.4% of excess over $500,000 |

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.7% of the city taxable income |
| Over $14,400 but not over $30,000 | $389 plus 3.3% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $904 plus 3.35% of excess over $30,000 |
| Over $60,000 | $1,909 plus 3.4% of excess over $60,000 |

(B) For taxable years beginning after two thousand fourteen and before two thousand seventeen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.55% of the city taxable income |
| Over $14,400 but not over $30,000 | $367 plus 3.1% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $851 plus 3.15% of excess over $30,000 |
| Over $60,000 but not over $500,000 | $1,796 plus 3.2% of excess over $60,000 |
| Over $500,000 | $16,869 plus 3.4% of excess over $500,000 |

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.55% of the city taxable income |
| Over $14,400 but not over $30,000 | $367 plus 3.1% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $851 plus 3.15% of excess over $30,000 |
| Over $60,000 but not over $500,000 | $1,796 plus 3.2% of excess over $60,000 |
| Over $500,000 | $15,876 plus 3.4% of excess over $500,000 |

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or a city resident head of a household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning after two thousand sixteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.7% of the city taxable income |
| Over $12,000 but not over $25,000 | $324 plus 3.3% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $753 plus 3.35% of excess over $25,000 |
| Over $50,000 | $1,591 plus 3.4% of excess over $50,000 |

(B) For taxable years beginning after two thousand fourteen and before two thousand seventeen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.55% of the city taxable income |
| Over $12,000 but not over $25,000 | $306 plus 3.1% of excess over $12,000 |
| Over $25,000 but not | $709 plus 3.15% of excess |

| | |
|---|---|
| over $50,000 | over $25,000 |
| Over $50,000 but not over $500,000 | $1,497 plus 3.2% of excess over $50,000 |
| Over $500,000 | $16,891 plus 3.4% of excess over $500,000 |

(C) For taxable years beginning after two thousand nine and before two thousand fifteen:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.55% of the city taxable income |
| Over $12,000 but not over $25,000 | $306 plus 3.1% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $709 plus 3.15% of excess over $25,000 |
| Over $50,000 but not over $500,000 | $1,497 plus 3.2% of excess over $50,000 |
| Over $500,000 | $15,897 plus 3.4% of excess over $500,000 |

(b) Rate of tax. A tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-six:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 1.18% of the city taxable income |
| Over $21,600 but not over $45,000 | $255 plus 1.435% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $591 plus 1.455% of excess over $45,000 |
| Over $90,000 | $1,245 plus 1.48% of excess over $90,000 |

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-six:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 1.18% of the city taxable income |
| Over $14,400 but not over $30,000 | $170 plus 1.435% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $394 plus 1.455% of excess over $30,000 |
| Over $60,000 | $830 plus 1.48% of excess over $60,000 |

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every

city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or a city resident head of a household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following table:

For taxable years beginning after two thousand twenty-six:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 1.18% of the city taxable income |
| Over $12,000 but not over $25,000 | $142 plus 1.435% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $328 plus 1.455% of excess over $25,000 |
| Over $50,000 | $692 plus 1.48% of excess over $50,000 |

(c) Partners and partnerships. A partnership as such shall not be subject to tax under this chapter. Persons carrying on business as partners shall be liable for tax under this chapter only in their separate or individual capacities. As used in this chapter, the term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability company formed pursuant to section one hundred two-a of the banking law.

(d) Associations taxable as corporations. An association, trust or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall not be subject to tax under this chapter.

(e) Exempt trusts and organizations. A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this chapter, regardless of whether subject to federal and state income tax on unrelated business taxable income.

(f) Cross references. For definitions of city taxable income of:

(1) City resident individual, see section 11-1711 of this chapter.

(2) City resident estate or trust, see section 11-1718 of this chapter.

(g) Rate of tax. For taxable years beginning after two thousand two and before two thousand six, the tax imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax under this section for each taxable year on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.907% of the city taxable income |
| Over $21,600 but not over $45,000 | $628 plus 3.534% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,455 plus 3.591% of excess over $45,000 |
| Over $90,000 but not over $150,000 | $3,071 plus 3.648% of excess over $90,000 |
| Over $150,000 but not over $500,000 | $5,260 plus 4.05% of excess over $150,000 |
| Over $500,000 | $19,435 plus 4.45% of excess over $500,000 |

(B) For taxable years beginning in two thousand four:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.907% of the city taxable income |
| Over $21,600 but not over $45,000 | $628 plus 3.534% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,455 plus 3.591% of excess over $45,000 |
| Over $90,000 but not over $150,000 | $3,071 plus 3.648% of excess over $90,000 |
| Over $150,000 but not over $500,000 | $5,260 plus 4.175% of excess over $150,000 |
| Over $500,000 | $19,872 plus 4.45% of excess over $500,000 |

(C) For taxable years beginning in two thousand three:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $21,600 | 2.907% of the city taxable income |
| Over $21,600 but not over $45,000 | $628 plus 3.534% of excess over $21,600 |
| Over $45,000 but not over $90,000 | $1,455 plus 3.591% of excess over $45,000 |
| Over $90,000 but not over $150,000 | $3,071 plus 3.648% of excess over $90,000 |
| Over $150,000 but not over $500,000 | $5,260 plus 4.25% of excess over $150,000 |
| Over $500,000 | $20,135 plus 4.45% of excess over $500,000 |

(2) Resident heads of households. The tax under this section for each taxable year on the city taxable income of every city resident head of a household shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.907% of the city taxable income |
| Over $14,400 but not over $30,000 | $419 plus 3.534% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $970 plus 3.591% of excess over $30,000 |
| Over $60,000 but not over $125,000 | $2,047 plus 3.648% of excess over |

| | |
|---|---|
| | $60,000 |
| Over $125,000 but not over $500,000 | $4,418 plus 4.05% of excess over $125,000 |
| Over $500,000 | $19,606 plus 4.45% of excess over $500,000 |

(B) For taxable years beginning in two thousand four:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.907% of the city taxable income |
| Over $14,400 but not over $30,000 | $419 plus 3.534% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $970 plus 3.591% of excess over $30,000 |
| Over $60,000 but not over $125,000 | $2,047 plus 3.648% of excess over $60,000 |
| Over $125,000 but not over $500,000 | $4,418 plus 4.175% of excess over $125,000 |
| Over $500,000 | $20,075 plus 4.45% of excess over $500,000 |

(C) For taxable years beginning in two thousand three:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $14,400 | 2.907% of the city taxable income |
| Over $14,400 but not over $30,000 | $419 plus 3.534% of excess over $14,400 |
| Over $30,000 but not over $60,000 | $970 plus 3.591% of excess over $30,000 |
| Over $60,000 but not over $125,000 | $2,047 plus 3.648% of excess over $60,000 |
| Over $125,000 but not over $500,000 | $4,418 plus 4.25% of excess over $125,000 |
| Over $500,000 | $20,356 plus 4.45% of excess over $500,000 |

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax under this section for each taxable year on the city taxable income of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning in two thousand five:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.907% of the city taxable income |
| Over $12,000 but not over $25,000 | $349 plus 3.534% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $808 plus 3.591% of excess over $25,000 |
| Over $50,000 but not over $100,000 | $1,706 plus 3.648% of excess over |

| | |
|---|---|
| | $50,000 |
| Over $100,000 but not over $500,000 | $3,530 plus 4.05% of excess over $100,000 |
| Over $500,000 | $19,730 plus 4.45% of excess over $500,000 |

(B) For taxable years beginning in two thousand four:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.907% of the city taxable income |
| Over $12,000 but not over $25,000 | $349 plus 3.534% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $808 plus 3.591% of excess over $25,000 |
| Over $50,000 but not over $100,000 | $1,706 plus 3.648% of excess over $50,000 |
| Over $100,000 but not over $500,000 | $3,530 plus 4.175% of excess over $100,000 |
| Over $500,000 | $20,230 plus 4.45% of excess over $500,000 |

(C) For taxable years beginning in two thousand three:

| If the city taxable income is: | The tax is: |
|---|---|
| Not over $12,000 | 2.907% of the city taxable income |
| Over $12,000 but not over $25,000 | $349 plus 3.534% of excess over $12,000 |
| Over $25,000 but not over $50,000 | $808 plus 3.591% of excess over $25,000 |
| Over $50,000 but not over $100,000 | $1,706 plus 3.648% of excess over $50,000 |
| Over $100,000 but not over $500,000 | $3,530 plus 4.25% of excess over $100,000 |
| Over $500,000 | $20,530 plus 4.45% of excess over $500,000 |

(h) Tax table benefit recapture. For taxable years beginning after two thousand two and before two thousand six, there is hereby imposed a supplemental tax, in addition to the tax imposed under the opening paragraph of this section, for the purpose of recapturing the benefit of the tax tables contained in subdivision (g) of this section. The supplemental tax shall be an amount equal to the sum of the tax table benefits in paragraphs one and two of this subdivision multiplied by their respective fractions in such paragraphs provided, however, that paragraph one of this subdivision shall not apply to taxpayers who are not subject to the second highest rate of tax.

(1) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subdivision (g) of this section not subject to the second highest rate of tax for the taxable year multiplied by such rate and (ii) the second highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subdivision (g) of this section.

(B) The fraction is computed as follows: the numerator is the lesser of fifty thousand dollars or the excess of New York adjusted gross income for the taxable year over one hundred fifty thousand dollars and the denominator is fifty thousand dollars.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

(2) Resident married individuals filing joint returns, surviving spouses, resident heads of households, resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. (A) The tax table benefit is the difference between (i) the amount of taxable income set forth in the tax table in subdivision (g) of this section not subject to the highest rate of tax for the taxable year multiplied by such rate and (ii) the highest dollar denominated tax for such amount of taxable income set forth in the tax table applicable to the taxable year in subdivision (g) of this section less the sum of the tax table benefits in paragraph one of this subdivision.

(B) For such taxpayers with adjusted gross income over five hundred thousand dollars, the fraction is one. Provided, however, that the total tax prior to the application of any tax credits shall not exceed the highest rate of tax set forth in the tax table in subdivision (g) of this section multiplied by the taxpayer's taxable income.

(C) This paragraph shall only apply to taxable years beginning after two thousand two and before two thousand six.

§ 11-1703 Separate tax on the ordinary income portion of lump sum distributions. (a) Imposition of separate tax. In addition to any other tax imposed by this chapter, there is hereby imposed for each taxable year a separate tax on the ordinary income portion of a lump sum distribution of every city resident individual, estate and trust which has made an election of lump sum treatment under subsection (e) of section four hundred two of the internal revenue code. The recipient of a lump sum distribution shall be liable for the tax imposed by this section. The credits against tax under this chapter, except for the credit under section 11-1773, shall not be allowed against the tax imposed by this section.

(b) Cross reference. For computation of tax, see section 11-1724 of this chapter.

§ 11-1704 Tax surcharge. (a) In addition to the taxes imposed by sections 11-1701 and 11-1703 of this subchapter, there is hereby imposed for each taxable year beginning after nineteen hundred eighty-nine but before nineteen hundred ninety-nine, a tax surcharge on the city taxable income of every city resident individual, estate and trust.

(b) The tax surcharge imposed pursuant to this section shall be determined as follows:

(1) Resident married individuals filing joint returns and resident surviving spouses. The tax surcharge under this section on the city taxable income of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the city taxable income of every city resident surviving spouse shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $15,500 | 0 |
| Over $15,500 but not over $27,000 | 0.51% of city taxable income in excess of $15,500 |
| Over $27,000 but not over $45,000 | $59 plus 0.55% of excess over $27,000 |
| Over $45,000 but not over $108,000 | $158 plus 0.51% of excess over $45,000 |
| Over $108,000 | $479 plus 0.51% of excess over $108,000 |

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $14,400 | 0 |
| Over $14,400 but not over $27,000 | 0.51% of city taxable income in excess of $14,400 |
| Over $27,000 but not over $45,000 | $64 plus 0.55% of excess over $27,000 |
| Over $45,000 but not over $108,000 | $162 plus 0.51% of excess over $45,000 |
| Over $108,000 | $484 plus 0.51% of excess over $108,000 |

(2) Resident heads of households. The tax surcharge under this section on the city taxable income of every city resident head of household shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $8,800 | 0 |
| Over $8,800 but not over $16,500 | 0.51% of city taxable income in excess of $8,800 |
| Over $16,500 but not over $27,500 | $39 plus 0.55% of excess over $16,500 |
| Over $27,500 but not over $66,000 | $100 plus 0.51% of excess over $27,500 |
| Over $66,000 | $296 plus 0.51% of excess over $66,000 |

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $7,350 | 0 |
| Over $7,350 but not over $9,200 | 0.42% of city taxable income in excess of $7,350 |
| Over $9,200 but not over $17,250 | $7 plus 0.51% of excess over $9,200 |
| Over $17,250 but not over $28,750 | $48 plus 0.55% of excess over $17,250 |
| Over $28,750 but not over $69,000 | $111 plus 0.51% of excess over $28,750 |
| Over $69,000 | $317 plus 0.51% of excess over |

| | |
|---|---|
| | $69,000 |

(3) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The tax surcharge under this section on the city taxable income of every city resident individual who is not a city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or a city resident head of household or a city resident surviving spouse, and on the city taxable income of every city resident estate and trust shall be determined in accordance with the following tables:

(A) For taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $9,000 | 0 |
| Over $9,000 but not over $15,000 | 0.51% of city taxable income in excess of $9,000 |
| Over $15,000 but not over $25,000 | $31 plus 0.55% of excess over $15,000 |
| Over $25,000 but not over $60,000 | $86 plus 0.51% of excess over $25,000 |
| Over $60,000 | $264 plus 0.51% of excess over $60,000 |

(B) For taxable years beginning after nineteen hundred ninety-four but before nineteen hundred ninety-nine:

| If the city taxable income is: | The tax surcharge is: |
|---|---|
| Not over $8,400 | 0 |
| Over $8,400 but not over $15,000 | 0.51% of city taxable income in excess of $8,400 |
| Over $15,000 but not over $25,000 | $33 plus 0.55% of excess over $15,000 |
| Over $25,000 but not over $60,000 | $88 plus 0.51% of excess over $25,000 |
| Over $60,000 | $266 plus 0.51% of excess over $60,000 |

(c) The tax surcharge imposed pursuant to this section shall be administered, collected and distributed by the commissioner of taxation and finance in the same manner as the taxes imposed pursuant to sections 11-1701 and 11-1703 of this subchapter, and all of the provisions of this chapter, including sections 11-1706, 11-1721 and 11-1773 of this chapter, shall apply to the tax surcharge imposed by this section.

(d) (1) Notwithstanding subdivision (b) of this section, with respect to taxable years beginning in nineteen hundred ninety-three, nineteen hundred ninety-four, nineteen hundred ninety-five and nineteen hundred ninety-six, the mayor shall, by August first of nineteen hundred ninety-two, nineteen hundred ninety-four and nineteen hundred ninety-five, and by September fifteenth of nineteen hundred ninety-three, transmit to the commissioner of taxation and finance a certification setting forth the percentage of non-achievement regarding the combined police uniformed staffing level with respect to the fiscal year of the city ending on the immediately preceding June thirtieth, provided, however, that for the city fiscal year ending in nineteen hundred ninety-three

the percentage of non-achievement shall be determined by the combined police uniformed staffing level existing on August thirtieth, nineteen hundred ninety-three, and further provided for all such fiscal years that the percentage of non-achievement shall be calculated according to the procedure specified in a memorandum of understanding relating to the New York city safe streets-safe city program and to the enactment of this subdivision dated February eleventh, nineteen hundred ninety-one, as amended, and executed by the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the mayor and the speaker of the city council, any modification of such memorandum of understanding subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement is equal to or exceeds twenty-five percent with respect to the fiscal year of the city of New York ending in nineteen hundred ninety-two, twenty percent with respect to the city fiscal year ending in nineteen hundred ninety-three or five percent with respect to the city fiscal years ending in nineteen hundred ninety-four and nineteen hundred ninety-five, then the rates of the tax surcharge imposed by this section for taxable years beginning in the calendar year beginning on January first next succeeding such August first or September fifteenth shall be the products of the rates set forth in subdivision (b) of this section and a percentage equal to the difference between one hundred percent and such percentage of non-achievement, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of the tax surcharge set forth in subdivision (b) of this section shall be reduced conformably.

(2) Notwithstanding subdivision (b) of this section, with respect to the taxable year beginning in nineteen hundred ninety-eight, the mayor shall, by August first of nineteen hundred ninety-seven, transmit to the state commissioner of taxation and finance a certification setting forth the percentage of non-achievement regarding the police uniformed staffing level with respect to the fiscal year ending on the immediately preceding June thirtieth, provided, however, that such percentage of non-achievement shall be calculated according to the procedure specified in a new memorandum of understanding relating to the enactment of this paragraph dated no later than thirty days after such enactment, as executed by the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the mayor and the speaker of the city council and any modifications of such new memorandum of understanding subsequently agreed upon by all such signatories in a single subsequent memorandum of understanding. If such percentage of non-achievement exceeds two percent with respect to the fiscal year of the city ending in nineteen hundred ninety-seven, then the rates of the tax surcharge authorized by this section for the taxable years beginning in the calendar year beginning on January first, nineteen hundred ninety-eight shall be the products of the rates set forth in subdivision (b) of this section and a percentage equal to the difference between one hundred percent and the portion of the percentage of non-achievement that is in excess of two percent, such products computed to the nearest hundredth of a percent, and the dollar denominated amounts of the tax surcharge set forth in subdivision (b) of this section shall be reduced conformably.

(3) If the rates of the surcharge imposed by this section are modified pursuant to paragraph one or paragraph two of this subdivision, the

state commissioner of taxation and finance shall promulgate regulations stating the modified rates.

(e) Notwithstanding anything in this section or section 11-1798 of this chapter to the contrary, of the total revenue, including interest and penalties, from the tax surcharge imposed by this section which the state comptroller is required to pay, after June thirtieth, nineteen hundred ninety-two, to the chief fiscal officer of the city for payment into the treasury of the city, one hundred ten million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-two, two hundred million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-three, one hundred sixty-seven million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-four, and one hundred eighty-five million dollars thereof paid to the chief fiscal officer during the fiscal year of the city commencing July first, nineteen hundred ninety-five, shall be credited to and deposited in the criminal justice account established within the general fund of the city for the implementation of the safe streets-safe city program. The balance of such revenue shall be credited to the general fund of the city and shall be applied exclusively to or in aid or support of the city's provision of criminal justice and fire protection services.

(f) Notwithstanding anything in this article to the contrary, of the total revenue, including interest and penalties, from the tax surcharge imposed pursuant to the authority of this section which the state comptroller is required to pay to the chief fiscal officer of the city for payment into the treasury of the city, ninety million dollars thereof paid to such chief fiscal officer during the fiscal year of the city commencing during calendar year nineteen hundred ninety-six, and one hundred eighty-five million dollars thereof paid to such chief fiscal officer during the fiscal year of the city commencing during calendar year nineteen hundred ninety-seven, shall be credited to and deposited in a criminal justice account established by the city within its general fund. The balance of such revenue from such tax surcharge which the state comptroller is required to pay to such chief fiscal officer for payment into the treasury of the city for the taxable years beginning in the calendar years beginning on January first, nineteen hundred ninety-seven and January first, nineteen hundred ninety-eight shall be credited to the general fund of the city to be applied exclusively to or in aid or support of the city's provision of criminal justice and fire protection services; provided however, that, notwithstanding the foregoing, such balance shall be applied to implementation of the capital program for public schools within the city and a supplemental capital rehabilitation program for such schools, to the extent that such application is necessary for the timely implementation of such programs in accordance with the memorandum of understanding executed pursuant to paragraph two of subdivision (d) of this section and any modifications thereto.

§ 11-1704.1 Additional tax. (a) (1) In addition to any other taxes imposed by this chapter, there is hereby imposed for each taxable year beginning after nineteen hundred ninety but before two thousand twenty-seven, an additional tax on the city taxable income of every city resident individual, estate and trust, to be calculated for each taxable year as follows: (i) for each taxable year beginning after nineteen hundred ninety but before nineteen hundred ninety-nine, at the rate of

fourteen percent of the sum of the taxes for each such taxable year determined pursuant to section 11-1701 and section 11-1704 of this subchapter; and (ii) for each taxable year beginning after nineteen hundred ninety-eight, at the rate of fourteen percent of the tax for such taxable year determined pursuant to such section 11-1701 of this subchapter.

(2) Notwithstanding paragraph one of this subdivision, for each taxable year beginning after two thousand but before two thousand two, the additional tax shall be calculated as follows: (i) Resident married individuals filing joint returns and resident surviving spouses. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of this subchapter of every city resident married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter and on the tax determined pursuant to section 11-1701 of this subchapter of every city resident surviving spouse shall be determined as follows: (A) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income equal to or less than ninety thousand dollars, then the additional tax shall be 5.25% of such tax; (B) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income over ninety thousand dollars, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including ninety thousand dollars and 12.25% of such tax on city taxable income in excess of ninety thousand dollars.

(ii) Resident heads of households. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of this subchapter of every city resident head of a household shall be determined as follows: (A) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income equal to or less than sixty thousand dollars, then the additional tax shall be 5.25% of such tax; (B) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income over sixty thousand dollars, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including sixty thousand dollars and 12.25% of such tax on city taxable income in excess of sixty thousand dollars.

(iii) Resident unmarried individuals, resident married individuals filing separate returns and resident estates and trusts. The additional tax under this section for each taxable year on the tax determined pursuant to section 11-1701 of this subchapter of every city resident individual who is not a married individual who makes a single return jointly with his or her spouse under subdivision (b) of section 11-1751 of this chapter or a city resident head of a household or a city resident surviving spouse, and on the tax determined pursuant to section 11-1701 of this subchapter of every city resident estate and trust shall be determined as follows: (A) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income equal to or less than fifty thousand dollars, then the additional tax shall be 5.25% of such tax; (B) If the tax determined pursuant to section 11-1701 of this subchapter is based on city taxable income over fifty thousand dollars, then the additional tax shall be the sum of 5.25% of such tax on city taxable income up to and including fifty thousand dollars and 12.25% of such tax on city taxable income in excess of fifty thousand dollars.

(b) The additional tax imposed pursuant to this section shall be administered, collected and distributed by the commissioner of taxation

and finance in the same manner as the other taxes imposed pursuant to this chapter, and all of the provisions of this chapter, including sections 11-1706, 11-1721 and 11-1773, shall apply to the additional tax imposed by this section.

§ 11-1705 General provisions and definitions. (a) Accounting periods and methods. (1) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as his or her taxable year for federal income tax purposes.

(2) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his or her taxable year for purposes of this chapter shall be similarly changed. If a taxable year of less than twelve months results from a change of taxable year, the city standard deduction and the city exemptions shall be prorated under regulations of the tax commission.

(3) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as his or her method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, city taxable income shall be computed under such method as in the opinion of the tax commission clearly reflects income.

(4) Change of accounting methods. (A) If a taxpayer's method of accounting is changed for federal income tax purposes, his or her method of accounting for purposes of this chapter shall be similarly changed.

(B) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(C) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the tax commission.

(b) City resident and city nonresident defined. (1) City resident individual. A city resident individual means an individual:

(A) who is domiciled in this city, unless (i) the taxpayer maintains no permanent place of abode in this city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this city, or (ii) (I) within any period of five hundred forty-eight consecutive days the taxpayer is present in a foreign country or countries for at least four hundred fifty days, and (II) during the period of five hundred forty-eight consecutive days the taxpayer, the taxpayer's spouse, unless such spouse is legally separated, and the taxpayer's minor children are not present in this city for more than ninety days, and (III) during any period of less than twelve months, which would be treated as a separate taxable period pursuant to section 11-1754 of this chapter, and which period is contained within the period of five hundred forty-eight consecutive days, the taxpayer is present in this city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in that period of less than twelve months bears to five hundred forty-eight, or

(B) who maintains a permanent place of abode in this city and spends in the aggregate more than one hundred eighty-three days of the taxable year in this city, whether or not domiciled in this city for any portion of the taxable year, unless such individual is in active service in the armed forces of the United States.

(2) City nonresident individual. A city nonresident individual means an individual who is not a city resident.

(3) City resident estate or trust. A city resident estate or trust means:

(A) the estate of a decedent who at his or her death was domiciled in this city,

(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his or her death was domiciled in this city, or

(C) a trust, or portion of a trust, consisting of the property of:

(i) a person domiciled in this city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(ii) a person domiciled in this city at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of this paragraph, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(D) (i) Provided, however, a resident trust is not subject to tax under this article if all of the following conditions are satisfied: (I) all the trustees are domiciled outside the city of New York; (II) the entire corpus of the trusts, including real and tangible property, is located outside the city of New York; and (III) all income and gains of the trust are derived from or connected with sources outside of the city of New York, determined as if the trust were a non-resident trust.

(ii) For purposes of item (II) of clause (i) of this subparagraph, intangible property shall be located in this city if one or more of the trustees are domiciled in the city of New York.

(iii) Provided further, that for the purposes of item (I) of clause (i) of this subparagraph, a trustee which is a banking corporation as defined in subdivision (a) of section 11-640 of this title and which is domiciled outside the city of New York at the time it becomes a trustee of the trust shall be deemed to continue to be a trustee domiciled outside the city of New York notwithstanding that it thereafter otherwise becomes a trustee domiciled in the city of New York by virtue of being acquired by, or becoming an office or branch of, a corporate trustee domiciled within the city of New York.

For the purposes of this subparagraph, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be 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 |

| | | | | |
|---|---|---|---|---|
| Not over $12,500 | $30 | $50 | $50 | $30 |
| Over $12,500 but not over $15,000 | $20 | $40 | $50 | $30 |
| Over $15,000 but not over $17,500 | $10 | $20 | $25 | $25 |
| Over $17,500 but not over $20,000 | $0 | $15 | $15 | $15 |
| Over $20,000 but not over $22,500 | $0 | $0 | $0 | $10 |

(3) For purposes of this subdivision:

(A) "Household gross income" shall mean the aggregate federal adjusted gross income of a household, as the term household is defined in subparagraph (B) of this paragraph, for the taxable year.

(B) "Household" means a husband and wife, a head of household, a surviving spouse, or an individual who is not married nor the head of a household nor a surviving spouse nor a taxpayer with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(C) "Household gross income of a husband and wife" shall be the aggregate of their federal adjusted gross incomes for the taxable year irrespective of whether joint or separate city income tax returns are filed. Provided, however, that a husband or wife who is required to file a separate city income tax return shall be permitted one-half the credit otherwise allowed his or her household, except as limited by paragraph one of this subdivision.

(D) "Household gross income" shall be computed in all cases as if each member of the household were a resident for the entire taxable year.

(E) If a taxpayer changes his or her status during his or her taxable year from resident to nonresident, or from nonresident to resident, the household credit shall be prorated according to the number of months in the period of residence. In the case of a husband and wife, if either or both changes his or her status from resident to nonresident or from nonresident to resident and separate returns are filed, the credit computed for the entire year shall be divided first as provided in subparagraph (C) of this paragraph and then prorated according to the number of months in the period of residence.

(c) State school tax reduction credit.

(1) For taxable years beginning after nineteen hundred ninety-seven and ending before two thousand sixteen, a state school tax reduction credit shall be allowed as provided in the following tables. The credit shall be allowed against the taxes authorized by this article reduced by the credits permitted by this article. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the comptroller, subject to a certificate of the commissioner, shall pay as an overpayment, without interest, the amount of such excess. For purposes of this subdivision, no credit shall be granted to an individual with respect to whom a deduction under subsection (c) of section one hundred fifty-one of the internal revenue code is allowable to another taxpayer for the taxable year.

(2) The amount of the credit under this paragraph shall be determined based upon the taxpayer's income as defined in subparagraph (ii) of

paragraph (b) of subdivision four of section four hundred twenty-five of the real property tax law. For purposes of this paragraph, any taxpayer under subparagraphs (A) and (B) of this paragraph with income of more than two hundred fifty thousand dollars shall not receive a credit.

Beginning in the two thousand ten tax year and each tax year thereafter through two thousand fifteen, the "more than two hundred fifty thousand dollar" income limitation shall be adjusted by applying the inflation factor set forth herein, and rounding each result to the nearest multiple of one hundred dollars. The department shall establish the income limitation to be associated with each subsequent tax year by applying the inflation factor set forth herein to the figures that define the income limitation that were applicable to the preceding tax year, as determined pursuant to this subdivision, and rounding each result to the nearest multiple of one hundred dollars. Such determination shall be made no later than March first, two thousand ten and each year thereafter.

(A) Married individuals filing joint returns and surviving spouses. In the case of a husband and wife who make a single return jointly and of a surviving spouse:

| For taxable years beginning: | The credit shall be: |
|---|---|
| in 2001-2005 | $125 |
| in 2006 | $230 |
| in 2007-2008 | $290 |
| in 2009-2015 | $125 |

(B) All others. In the case of an unmarried individual, a head of a household or a married individual filing a separate return:

| For taxable years beginning: | The credit shall be: |
|---|---|
| in 2001-2005 | $62.50 |
| in 2006 | $115 |
| in 2007-2008 | $145 |
| in 2009-2015 | $62.50 |

(4) Husband and wife who make a joint return. If a husband and wife make a single return jointly, the credit under this subdivision shall be determined under paragraph two of this subdivision, if either of them has attained the age of sixty-five on or before the close of the taxable year.

(5) Part-year residents. If a taxpayer changes status during the taxable year from resident to nonresident, or from nonresident to resident, the state school tax reduction credit shall be prorated according to the number of months in the period of residence.

(c) Credit for unincorporated business taxes paid. (1) A city resident individual, estate or trust whose city adjusted gross income includes income, gain, loss or deductions from one or more unincorporated businesses conducted by such city resident individual, estate or trust that are subject to the tax imposed by chapter five of this title, or a distributive share of income, gain, loss and deductions of, or guaranteed payments from, one or more partnerships that are subject to the tax imposed by such chapter, shall be allowed a credit as provided in paragraph two of this subdivision against the tax otherwise due under sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter.

(2) (A) Subject to the limitation set forth in subparagraph (B) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall be determined as follows:

(i) For taxable years beginning on or after January first, nineteen hundred ninety-seven and before January first, two thousand seven:

(I) If the city taxable income is forty-two thousand dollars or less, the credit shall be sixty-five percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than forty-two thousand dollars but not greater than one hundred forty-two thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from sixty-five percent, one-tenth of a percentage point (.001) for every increment of two hundred dollars, or fractional part thereof, of city taxable income in excess of forty-two thousand dollars.

(III) If the city taxable income is greater than one hundred forty-two thousand dollars, the credit shall be fifteen percent of the amount determined in paragraph three of this subdivision.

(ii) For taxable years beginning on or after January first, two thousand seven:

(I) If the city taxable income is forty-two thousand dollars or less, the credit shall be one hundred percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than forty-two thousand dollars but less than one hundred forty-two thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from one hundred percent, a percentage determined by subtracting forty-two thousand dollars from city taxable income, dividing the result by one hundred thousand dollars and multiplying by seventy-seven percent.

(III) If the city taxable income is one hundred forty-two thousand dollars or greater, the credit shall be twenty-three percent of the amount determined in paragraph three of this subdivision.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall not exceed the sum of the taxes that would otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter on such taxpayer for such taxable year after the allowance of any other credits allowed by this section or section 11-1721 of this chapter.

(3) Subject to the provisions of subparagraph (C) of this paragraph, the amount determined in this paragraph is the sum of:

(A) for each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business; and

(B) for each unincorporated business in which the taxpayer is a partner, the product of:

(i) the sum of (I) the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending within or with the taxable year of the partner and paid by the unincorporated business and (II) the amount of any credit or credits taken by the unincorporated business under subdivision (j) of section 11-503 of this title for its taxable year ending within or with the taxable year of the partner; and

(ii) a fraction, the numerator of which is the net total of the partner's distributive share of income, gain, loss and deductions of, and guaranteed payments from, the unincorporated business for such taxable year, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated busi-

ness for whom or which such net total, as separately determined for each partner, is greater than zero.

(C) For a taxpayer that changes its status from a city resident to a city nonresident or from a city nonresident to a city resident during the taxable year:

(i) the amount determined in subparagraph (A) of this paragraph shall be, with respect to each unincorporated business conducted by the taxpayer, the tax imposed by chapter five of this title on such unincorporated business for its taxable year ending with the taxable year of the taxpayer and paid by the unincorporated business, multiplied by a fraction, the numerator of which is that portion of the income, gain, loss and deductions of the unincorporated business included in the taxpayer's adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the total, for such taxable year, of the income, gain, loss and deductions of the unincorporated business, and

(ii) the amount determined in clause (ii) of subparagraph (B) of this paragraph shall be a fraction, the numerator of which is that portion of the taxpayer's net total distributive share of income, gain, loss and deductions of, and that portion of guaranteed payments from, the unincorporated business included in the taxpayer's city adjusted gross income for the portion of the taxable year during which the taxpayer was a city resident, and the denominator of which is the sum, for such taxable year, of the net total distributive shares of income, gain, loss and deductions of, and guaranteed payments to, all partners in the unincorporated business, for whom or which such net total, as separately determined for each partner, is greater than zero.

(4) For purposes of subdivision (c) of section 11-1902 of this title, in determining the amount of tax that a nonresident would be required to pay if such nonresident were a resident of the city and subject to the tax on personal income of residents, the credit allowed by this subdivision shall be taken into account.

(d) Earned income tax credit. (1) For taxable years beginning after two thousand three, a credit against the city personal income tax shall be allowed, equal to five percent of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year, and, for taxable years beginning after two thousand twenty-one, a credit against the city personal income tax shall be allowed, equal to a percentage determined pursuant to subparagraphs (A) through (I) of this paragraph, of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. For purposes of this paragraph, "adjusted gross income" means New York adjusted gross income as determined pursuant to article twenty-two of the tax law. The percentage shall be:

(A) thirty percent, where the taxpayer's adjusted gross income for such taxable year is less than five thousand dollars;

(B) thirty percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of four thousand nine hundred ninety-nine dollars, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than five thousand dollars and less than seven thousand five hundred dollars;

(C) twenty-five percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than seven thousand five hundred dollars and less than fifteen thousand dollars;

(D) twenty-five percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of fourteen thousand nine hundred ninety-nine dollars, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than fifteen thousand dollars and less than seventeen thousand five hundred dollars;

(E) twenty percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than seventeen thousand five hundred dollars and less than twenty thousand dollars;

(F) twenty percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of such taxpayer's adjusted gross income for such taxable year in excess of nineteen thousand nine hundred ninety-nine dollars, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than twenty thousand dollars and less than twenty-two thousand five hundred dollars;

(G) fifteen percent, where the taxpayer's adjusted gross income for such taxable year is equal to or greater than twenty-two thousand five hundred dollars and less than forty thousand dollars;

(H) fifteen percent reduced by the product of two-tenths of a percentage point (0.002) and the amount of the taxpayer's adjusted gross income for such taxable year in excess of thirty-nine thousand nine hundred ninety-nine dollars, where such taxpayer's adjusted gross income for such taxable year is equal to or greater than forty thousand dollars and less than forty-two thousand five hundred dollars; and

(I) ten percent where the taxpayer's adjusted gross income for such taxable year is equal to or greater than forty-two thousand five hundred dollars.

(2) In the case of a resident taxpayer, the credit provided by this subdivision shall be allowed against the taxes authorized by this chapter for the taxable year reduced by the credits permitted by this chapter. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the state comptroller, subject to a certificate of the commissioner of the state department of taxation and finance, shall pay as an overpayment, without interest, the amount of such excess.

(3) If a taxpayer changes his or her status during the taxable year from city resident to city nonresident, or from city nonresident to city resident, the credit determined under this subdivision shall be limited to the amount determined by multiplying the amount of such credit by a fraction, the numerator of which is such taxpayer's city adjusted gross income, for the period of residence, and the denominator of which is such taxpayer's city adjusted gross income determined as if he or she were a city resident for the entire taxable year. City adjusted gross income shall be adjusted as provided in section 11-1754 of this chapter. The credit as so limited shall be applied as provided in paragraph two of this subdivision.

(4) Subject to the provisions of paragraph three of this subdivision, in the case of a husband and wife who file a joint return, but who are required to determine their city personal income taxes separately, the credit authorized pursuant to this subdivision may be applied against the tax of either or divided between them as they may elect. In the case of a husband and wife who are not required to file a federal return, the credit under this subsection shall be allowed only if such taxpayers file a joint city personal income tax return.

(5) If the state commissioner of taxation and finance determines that the taxpayer is eligible to receive the credit provided under this subdivision but has not claimed such credit on his or her return, the

state commissioner of taxation and finance shall compute and issue any refund for the allowable credit amount provided under this subdivision. Any refund paid pursuant to this paragraph shall be deemed to be a refund of an overpayment of tax as provided in section 11-1786 of this chapter, provided, however, that no interest shall be paid thereon.

(e) Credit for certain household and dependent care services necessary for gainful employment. (1) For taxable years beginning on or after January first, two thousand seven, a taxpayer shall be allowed a credit as provided herein equal to the applicable percentage of the credit allowed under subsection (c) of section six hundred six of the tax law with respect to qualifying individuals as defined in paragraph one of subsection (b) of section twenty-one of the internal revenue code, without regard to whether the taxpayer in fact claimed the credit under such section twenty-one for the taxable year, who are dependents of the taxpayer and who have not attained the age of four as of the end of the taxable year. The applicable percentage shall be determined as follows:

(A) If household gross income as defined in subparagraph (A) of paragraph three of subdivision (b) of this section is twenty-five thousand dollars or less, the applicable percentage shall be seventy-five percent.

(B) If such household gross income is greater than twenty-five thousand dollars but not greater than thirty thousand dollars, the applicable percentage shall be seventy-five percent multiplied by one minus a fraction, the numerator of which is such household gross income less twenty-five thousand dollars and the denominator of which is five thousand dollars.

(C) If such household gross income is greater than thirty thousand dollars, the applicable percentage shall be zero.

(2) The credit under this subdivision shall be allowed against the taxes imposed by this chapter reduced by the credits permitted by this chapter. If the credit exceeds the tax as so reduced, the taxpayer may receive, and the state comptroller, subject to the certificate of the state commissioner of taxation and finance, shall pay as an overpayment, without interest, the amount of such excess, provided, however, in the case of a taxpayer who is a part-year resident of New York city any such overpayment under this paragraph shall be limited to the amount of such excess multiplied by a fraction, the numerator of which is federal adjusted gross income for the period of residence, computed as if the taxable year for federal income tax purposes were limited to the period of residence, and the denominator of which is federal adjusted gross income for the taxable year.

(3) In the case of a husband and wife who filed a joint federal return, but who are required to determine their New York city taxes separately, the credit allowed pursuant to this subdivision may only be applied against the tax imposed on the spouse with the lower taxable income, computed without regard to such credit, provided, however, if the spouse with the lower taxable income is a nonresident of the city, no credit shall be allowed under this subdivision. In the case of a husband and wife who are not required to file a federal return, the credit under this subdivision shall be allowed only if such taxpayers file a joint New York city income tax return.

(f) Credit for general corporation tax paid. (1) A city resident individual, estate or trust whose city adjusted gross income includes a pro rata share of income, loss and deductions described in paragraph one of subsection (a) of section thirteen hundred sixty-six of the internal revenue code, from one or more New York S corporations as defined in

subdivision one-A of section two hundred eight of the tax law, or from one or more QSSSs as defined in subdivision one-B of section two hundred eight of the tax law, that are exempt QSSSs by reason of clause (A) of subparagraph one of paragraph (k) of subdivision nine of section two hundred eight of the tax law, on which a tax is imposed by subchapter two of chapter six of this title, shall be allowed a credit as provided in paragraph two of this subdivision against the tax otherwise due under sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this chapter.

(2) (A) Subject to the limitations set forth in subparagraphs (B) and (C) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall be determined as follows:

(i) For taxable years beginning on or after January first, two thousand fourteen and before July first, two thousand nineteen:

(I) If the city taxable income is thirty-five thousand dollars or less, the amount of the credit shall be one hundred percent of the amount determined in paragraph three of this subdivision.

(II) If the city taxable income is greater than thirty-five thousand dollars but less than one hundred thousand dollars, the amount of the credit shall be a percentage of the amount determined in paragraph three of this subdivision, such percentage to be determined by subtracting from one hundred percent, a percentage determined by subtracting thirty-five thousand dollars from city taxable income, dividing the result by sixty-five thousand dollars and multiplying by one hundred percent.

(III) If the city taxable income is one hundred thousand dollars or greater, no credit shall be allowed.

(IV) Provided further that for any taxable year of a taxpayer for which this credit is effective that encompasses days occurring after June thirtieth, two thousand nineteen, the amount of the credit determined in item (I) or (II) of this clause shall be multiplied by a fraction, the numerator of which is the number of days in the taxpayer's taxable year occurring on or before June thirtieth, two thousand nineteen, and the denominator of which is the number of days in the taxpayer's taxable year.

(B) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, the credit allowed to a taxpayer for a taxable year under this subdivision shall not exceed the sum of the taxes that would otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter on such taxpayer for such taxable year after the allowance of any other credits allowed by subdivisions (a), (b) and (c) of this section, and section 11-1721 of this chapter.

(C) Notwithstanding anything to the contrary in subparagraph (A) of this paragraph, no credit shall be allowed for any amount of tax imposed, or credit allowed, by subchapter two of chapter six of this title on, or to, a combined group of corporations including a New York S corporation or an exempt QSSS, except where the combined group consists exclusively of one or more New York S corporations and one or more exempt QSSSs of such corporations as described in paragraph one of this subdivision, provided that each of the New York S corporations included in the group is wholly owned by the same interests and in the same proportions as each other New York S corporation included in the group.

(3) Subject to the provisions of subparagraph (B) of this paragraph and subparagraph (C) of paragraph two of this subdivision, the amount determined in this paragraph is the sum of the taxpayer's pro rata share of the amounts determined in subparagraph (A) of this paragraph for each New York S corporation, or exempt QSSS, described in paragraph one of this subdivision, a pro rata share of whose income, loss and deductions

described in paragraph one of subsection (a) of section thirteen hundred sixty-six of the internal revenue code, is included in the taxpayer's city adjusted gross income.

(A) The amount determined in this subparagraph is the sum of:

(i) the taxes imposed by subchapter two of chapter six of this title on such corporation, or a combined group including such corporation, for its taxable year ending within or with the taxable year of the taxpayer and paid by such corporation, or combined group; and

(ii) the amount of any credit or credits taken by such corporation, or a combined group including such corporation, under subdivision eighteen of section 11-604 of this title for its taxable year ending within or with the taxable year of the taxpayer.

(B) For purposes of this subdivision, the taxpayer's pro rata share of the amount in subparagraph (A) of this paragraph for the taxable year shall be the amount determined with respect to the taxpayer:

(i) by assigning an equal portion of the amount in subparagraph (A) of this paragraph to each day of the corporation's taxable year on which the corporation has shares outstanding,

(ii) then by dividing that portion pro rata among the shares outstanding on that day; provided, however,

(iii) if the taxable year of such corporation for purposes of chapter six of this title is different from its New York S year or S short year as defined in subdivision one-A of section two hundred eight of the tax law, only those portions that are assigned to days of the taxable year that are also days of the New York S year or S short year shall be taken into account in determining the shareholder's pro rata share of the amount determined in subparagraph (A) of this paragraph.

(g) Credit for city pass-through entity tax. (1) A taxpayer who is a partner or member of an electing city partnership and a taxpayer shareholder of an electing city resident S corporation subject to tax under article twenty-four-B of the tax law shall be entitled to a credit against the tax imposed by such article. For purposes of this subdivision, the terms "electing city partnership," "electing city resident S corporation," "city pass-through entity tax," and "direct share of city pass-through entity tax" shall have the same meanings as used in article twenty-four-B of the tax law.

(2) The amount of the credit shall be equal to the partner's, member's or shareholder's direct share of the city pass-through entity tax.

(3) If a taxpayer is a partner, member or shareholder in more than one electing city partnership and/or electing city resident S corporation that is subject to tax pursuant to article twenty-four-B of the tax law, the amount of the credit of such taxpayer shall be equal to the sum of the amounts of such credits calculated pursuant to paragraph two of this subdivision with regard to each entity in which such taxpayer has a direct ownership interest.

(4) If the amount of the credit allowable pursuant to this subdivision for any taxable year exceeds the tax due for such year pursuant to article twenty-four-B of the tax law, the excess amount shall be treated as an overpayment, to be credited or refunded, without interest.

(5) Limitation on credit. No credit shall be allowed to a taxpayer under this subdivision unless the electing city partnership or electing city resident S corporation provided sufficient information to identify such taxpayer on its city pass-through entity tax return as required under paragraph two of subsection (c) of section eight hundred seventy-two of the tax law for an electing city partnership or paragraph two of subsection (d) of section eight hundred seventy-two of the tax law for

an electing city resident S corporation. The credit allowed to a taxpayer under this subdivision shall not exceed the direct share of city pass-through entity tax reported by such electing city partnership or electing city resident S corporation attributable to such taxpayer on such electing city partnership's or such electing city resident S corporation's return filed pursuant to section eight hundred seventy-two of the tax law.

§ 11-1707 Meaning of terms. (a) General. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required but such meaning shall be subject to the exceptions or modifications prescribed in this chapter or by statute. Any reference in this chapter to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six, unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time or from time to time for the taxable year, as included and quoted in the appendices, including any supplements and additions thereto, to this chapter. Provided however, for taxable years beginning before January first, two thousand twenty-two, any amendments made to the internal revenue code of nineteen hundred eighty-six after March first, two thousand twenty shall not apply to this chapter. Such quotation of the aforesaid laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the internal revenue code or of any other law of the United States in such appendices shall not necessarily mean that it is applicable or has relevance to this chapter.

(b) Marital or other status. An individual's marital or other status under section 11-1701 of this chapter and section 11-1714 of this chapter shall be the same as his or her marital or other status for purposes of establishing the applicable federal income tax rates.

(c) "City" and "this city" as used in this chapter means the city of Staten Island; "tax commission" as used in this chapter means the tax commission of the state of New York; and "state" or "this state" as used in this chapter means the state of New York.

## SUBCHAPTER 2
## RESIDENTS

§ 11-1711 City taxable income of a city resident individual. (a) General. The city taxable income of a city resident individual shall be his or her city adjusted gross income less his or her city deduction and city exemptions, as determined under this chapter.

(b) Husband and wife.

(1) If the federal taxable income of husband or wife, both of whom are residents, is determined on a separate federal return, their city taxable incomes shall be separately determined.

(2) If the federal taxable income of husband and wife, both of whom are residents, is determined on a joint federal return, their city taxable income shall be determined jointly.

(3) If neither husband or wife, both of whom are residents, files a federal return:

(A) their tax shall be determined on their joint city taxable income, or

(B) separate taxes may be determined on their separate city taxable incomes if they both so elect.

(4) If either husband or wife is a resident and the other is a nonresident, a separate tax shall be determined on the city taxable income of the resident spouse on a separate form unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint city taxable income as if both were residents.

§ 11-1712 City adjusted gross income of a city resident individual. (a) General. The city adjusted gross income of a city resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. There shall be added to federal adjusted gross income: (1) Interest income on obligations of any state other than this state, or of a political subdivision of any other such state unless created by compact or agreement to which this state is a party, to the extent not properly includible in federal adjusted gross income;

(2) Interest or dividend income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes. (A) General. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

(B) Shareholders of S corporations. In the case of a shareholder of an S corporation, with respect to taxes imposed upon or payable by the corporation, the term "income taxes" in subparagraph (A) of this paragraph shall also include the tax imposed under article nine-A of the tax law, regardless of the measure of such tax, but shall not otherwise include taxes imposed by this or any other state of the United States, or any political subdivision of this or any other state, or the District of Columbia.

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter, to the extent deductible in determining federal adjusted gross income.

(5) Expenses paid or incurred during the taxable year for: (i) the production or collection of income which is exempt from tax under this chapter, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this chapter, to the extent that such expenses and premiums are deductible in determining federal adjusted gross income.

(6) In the case of a taxpayer who has exercised the election permitted by subdivision (g) or (h) of this section, the amount or amounts required by said subdivisions to be added to federal adjusted gross income.

(7) In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen or authorized to do business in this state under article fifteen-A of the business corporation law, for the taxpayer's taxable years beginning before nineteen hundred eighty-eight, the amount which is deductible by such corporation under paragraph one,

two or three of subsection (a) of section four hundred four of the internal revenue code for its taxable year ending in or with such taxpayer's taxable year for contributions paid on behalf of such taxpayer minus the lesser of fifteen thousand dollars or fifteen percent of the earned income derived by such taxpayers from such corporation during such taxpayer's taxable year. In the case of a taxpayer on whose behalf contributions are paid under more than one plan to which this paragraph applies or under a plan, contributions to which on his or her behalf are subject to the limitations provided in subsection (e) of section four hundred four of the internal revenue code, this paragraph shall apply with respect to the aggregate of the contributions paid on his or her behalf under all such plans.

(8) In the case of a taxpayer who is a shareholder of a corporation organized under article fifteen or authorized to do business in this state under article fifteen-A of the business corporation law, the amount which is required to be paid as a tax by such corporation pursuant to subsection (a) of section thirty-one hundred eleven of the internal revenue code with respect to the wages of such taxpayer for the calendar year ending in or with such taxpayer's taxable year.

(10) The amount required to be added to federal adjusted gross income pursuant to subdivision (i) of this section.

(14) The amount required to be added to federal adjusted gross income pursuant to subdivision (1) of this section.

(15) The amount allowed as an exclusion or deduction for the special additional mortgage recording taxes imposed by subdivision one-a of section two hundred fifty-three of the tax law in determining federal adjusted gross income for such taxable year.

(16) Unless the credit allowed pursuant to subsection (f) of section six hundred six of the tax law is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease in such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of such law was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of such law which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(17) The amount required to be added to federal adjusted gross income pursuant to subdivision (r) of this section.

(18) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect with respect to such corporation, an amount equal to his or her pro rata share of the corporation's reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amount of reductions for taxes determined under subdivision (s) of this section.

(19) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made with respect to such corporation, any item of loss or deduction of the corporation included in federal gross income

pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of loss or deduction determined under subdivision (s) of this section.

(20) S corporation distributions to the extent not included in federal gross income for the taxable year because of the application of section thirteen hundred sixty-eight, subsection (e) of section thirteen hundred seventy-one or subsection (c) of section thirteen hundred seventy-nine of the internal revenue code which represent income not previously subject to tax under this chapter because the election provided for in subsection (a) of section six hundred sixty of the tax law had not been made. Any such distribution treated in the manner described in paragraph two of subsection (b) of section thirteen hundred sixty-eight of the internal revenue code for federal income tax purposes shall be treated as ordinary income for purposes of this chapter.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, the amount required to be added to federal adjusted gross income pursuant to subdivision (n) of this section.

(22) The amounts required to be added to federal adjusted gross income pursuant to subdivision (q) of this section.

(23) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which the taxpayer claimed as a deduction in computing its federal adjusted gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(24) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which the taxpayer would have been required to include in the computation of its federal adjusted gross income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(25) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction under section one hundred sixty-eight of the internal revenue code;

(25) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the

provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code.

(26) The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code of the preceding municipality or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

(26-a) The amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under subdivision (h) of section four hundred fourteen of the Internal Revenue Code.

(27) Upon the disposition of recovery property to which paragraph twenty-six of subdivision (c) of this section applies, the amount, if any, by which the aggregate of the modifications described in such paragraph twenty-six attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-five of this subdivision attributable to such property; and

(27) Upon the disposition of property to which paragraph twenty-six of subdivision (c) of this section applies, the amount, if any, by which the aggregate of the modifications described in such paragraph twenty-six attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-five of this subdivision attributable to such property.

(29) When gain from the sale or other disposition of property is included in federal gross income, the amount of reduction in the basis of such property attributable to credit for solar and wind energy systems pursuant to paragraph nine of subsection (g) of section six hundred six of the tax law; but for taxable years beginning before nineteen hundred eighty-seven, if such gain affects the determination of a net capital gain for federal income tax purposes, forty percent of such amount.

(31) The amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(32) The amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the code of the preceding municipality.

(33) Real property taxes paid on qualified agricultural property and deducted in determining federal adjusted gross income, to the extent of the amount of the agricultural property tax credit allowed under subsection (n) or (i) of section six hundred six of the tax law.

(34) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code.

(35) The amount of any federal deduction for taxes imposed under article twenty-three of the tax law.

(36) In the case of a beneficiary of a trust that, in any tax year after its creation including its first tax year, was not subject to tax pursuant to subparagraph (D) of paragraph three of subdivision (b) of

section 11-1705 of this chapter, except for an incomplete gift non-grantor trust, as defined by paragraph thirty-seven of this subdivision, the amount described in the first sentence of section six hundred sixty-seven of the internal revenue code for the tax year to the extent not already included in federal gross income for the tax year, except that, in computing the amount to be added under this paragraph, such beneficiary shall disregard (i) subsection (c) of section six hundred sixty-five of the internal revenue code; (ii) the income earned by such trust in any tax year in which the trust was subject to tax under this article; and (iii) the income earned by such trust in a taxable year prior to when the beneficiary first became a resident of the city or in any taxable year starting before January first, two thousand fourteen. Except as otherwise provided in this paragraph, all of the provisions of the internal revenue code that are relevant to computing the amount described in the first sentence of subsection (a) of section six hundred sixty-seven of the internal revenue code shall apply to the provisions of this paragraph with the same force and effect as if the language of those internal revenue code provisions had been incorporated in full into this paragraph, except to the extent that any such provision is either inconsistent with or not relevant to this paragraph.

(37) In the case of a taxpayer who transferred property to an incomplete gift non-grantor trust, the income of the trust, less any deductions of such trust, to the extent such income and deductions of such trust would be taken into account in computing the taxpayer's federal taxable income if such trust in its entirety were treated as a grantor trust for federal tax purposes. For purposes of this paragraph, an "incomplete gift non-grantor trust" means a resident trust that meets the following conditions: (i) the trust does not qualify as a grantor trust under section six hundred seventy-one through six hundred seventy-nine of the internal revenue code, and (ii) the grantor's transfer of assets to the trust is treated as an incomplete gift under section twenty-five hundred eleven of the internal revenue code, and the regulations thereunder.

(38) The amount contributed to any or all of the following accounts within the charitable gifts trust fund set forth in section ninety-two-gg of the state finance law, to the extent the amount is claimed as an itemized deduction pursuant to section six hundred fifteen of the tax law: the health charitable account established by paragraph a of subdivision four of section ninety-two-gg of the state finance law, or the elementary and secondary education charitable account established by paragraph b of subdivision four of section ninety-two-gg of the state finance law.

(39) The amount of any gain excluded from federal gross income for the taxable year by subparagraph (A) of paragraph (1) of subsection (a) of section one thousand four hundred-Z-two of the internal revenue code.

(c) Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes; such interest income shall include the amount received as dividends from a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, which has been designated as the amount of such interest income in a written notice to shareholders not later than sixty days following the close of its taxable year; provided that, at the close of each quarter of the taxable year of such regulated investment company, at least fifty percent of the

value of its total assets, as defined in subsection (c) of section eight hundred fifty-one of the internal revenue code, consists of obligations of the United States and its possessions. The aggregate amount so designated by the regulated investment company for its taxable year shall not exceed the amount determined by multiplying the total distributions paid by such regulated investment company to its shareholders with respect to that taxable year, attributable to income earned in that year, including any such distributions paid after the close of the taxable year, as described in section eight hundred fifty-five of the internal revenue code, by the ratio that the interest income received in that taxable year on obligations of the United States and its possessions, after reduction for the deductions and expenses directly or indirectly attributable thereto, bears to the investment company taxable income of such regulated investment company for such taxable year, determined without regard to subparagraph (D) of paragraph two of subsection (b) of section eight hundred fifty-two of the internal revenue code;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) (i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

(ii) Pensions to officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of such, to the extent includible in gross income for federal income tax purposes;

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subdivision, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his or her retirement from employment, which arise: (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes. However, the term "pensions and annuities" shall also include distributions received by an individual who has attained the age of fifty-nine and one-half from an individual retirement account or an individual retirement annuity, as defined in section four hundred eight of the internal revenue code, and distributions received by an individual who has attained the age of fifty-nine and one-half from self-employed individual and owner-employee retirement plans which qualify under section four hundred one of the internal revenue code, whether or not the payments are periodic in nature. Nevertheless, the term "pensions and annuities" shall not include any lump sum distribution, as defined in subparagraph (A) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of the tax law. Where a husband and wife file a joint city personal income tax return, the modification provided for in this paragraph shall be computed as if they were filing separate city personal income tax returns. Where a payment would otherwise come within the meaning of the term "pensions and annuities" as set forth in this paragraph except that such individual is deceased, such payment shall, nevertheless, be treated as a pension or

annuity for purposes of this paragraph if such payment is received by such individual's beneficiary.

(3-b) (i) Disability income included in federal gross income, to the extent that such disability income would have been excluded from federal gross income pursuant to the provisions of subsection (d) of section one hundred five of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-three as they were in effect immediately prior to the repeal of such subsection. Notwithstanding the provisions of this subparagraph, the sum of disability income excluded pursuant to this paragraph, and pension and annuity income excluded pursuant to paragraph three-a of this subdivision, shall not exceed twenty thousand dollars.

(ii) Notwithstanding subdivision (f) of this section, if a husband and wife determine their federal income tax on a joint return but are required to determine their city income taxes separately, the amounts of exclusion allowed under subparagraph (i) of this paragraph shall be determined in the same joint manner as such amounts would have been determined under the provisions of paragraph five of subsection (d) of section one hundred five of the internal revenue code as such provisions were in effect immediately prior to the repeal of such subsection, but shall be attributed for city income tax purposes to the spouse who would have been required to report any such amount as income if the spouses had determined their federal income taxes separately.

(iii) Where a husband and wife file a joint city income tax return, the twenty thousand dollar limitation provided in subparagraph (i) of this paragraph shall be applied as if they were filing separate city income tax returns.

(3-c) Social security benefits to the extent includible in gross income for federal income tax purposes pursuant to section eighty-six of the internal revenue code.

(4) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis for New York state income tax purposes than for federal income tax purposes on the last day of the last taxable year for which article sixteen of the tax law imposes tax, that does not exceed such difference in basis.

(5) The amount necessary to prevent the taxation under this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxable under article sixteen of the tax law to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(6) Interest or dividend income on obligations or securities to the extent exempt from income tax under the laws of this state authorizing the issuance of such obligations on securities but includible in gross income for federal income tax purposes.

(7) The amount of any refund or credit for overpayment of income taxes imposed by this city, any other taxing jurisdiction, or any taxes imposed by article twenty-three of the tax law to the extent properly included in gross income for federal income tax purposes.

(8) Compensation received for active service in the armed forces of the United States on or after October first, nineteen hundred sixty-one, and prior to September first, nineteen hundred sixty-two; provided, however, that the amount of such compensation to be deducted shall not exceed one hundred dollars for each month of the taxable year, subsequent to September, nineteen hundred sixty-one, during any part of which

month the taxpayer was engaged in such service. For the purposes of this paragraph, the words "active service in the armed forces of the United States" shall mean active duty, other than for training, in the army, navy, including the marine corps, air force or coast guard of the United States as defined in title ten of the United States Code.

(8-a) Compensation and bonuses received for active service in the armed forces of the United States while a prisoner of war or missing in action during the hostilities in Vietnam, to the extent includible in gross income for federal income tax purposes.

(9) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible in determining federal adjusted gross income and is attributable to a trade or business carried on by the taxpayer.

(10) Ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is subject to tax under this chapter but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are attributable to a trade or business carried on by the taxpayer.

(11) In the case of a taxpayer who has exercised the election permitted by subdivision (g) or (h) of this section, the amount or amounts required by said subdivisions to be subtracted from federal adjusted gross income.

(12) The amount necessary to prevent the taxation of amounts properly included in New York adjusted gross income in prior taxable years in accordance with paragraph seven of subdivision (b) of this section.

(13) The amount required to be subtracted from federal adjusted gross income pursuant to subdivision (i) of this section.

(14) The amount that may be subtracted from federal adjusted gross income pursuant to subdivision (j) of this section.

(15) That portion of wages or salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code.

(19) The amount which may be subtracted from federal adjusted gross income pursuant to subdivision (r) of this section.

(20) The amounts which may be subtracted from federal adjusted gross income pursuant to subdivision (o) of this section.

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter s of chapter one of the internal revenue code for any taxable year of such corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, the amounts required to be subtracted from federal adjusted gross income pursuant to subdivision (n) of this section.

(22) In the case of a shareholder of an S corporation: (A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made with respect to such corporation, any item of income of the corporation included in federal gross income pursuant to section thirteen hundred sixty-six of the internal revenue code, and

(B) in the case of a New York S termination year, subparagraph (A) of this paragraph shall apply to the amounts of income determined under subdivision (s) of this section.

(23) The amounts which may be subtracted from federal adjusted gross income pursuant to subdivision (p) of this section.

(24) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which is included in the taxpayer's federal adjusted gross income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(25) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, relating to qualified mass commuting vehicles, any amount which the taxpayer could have excluded from federal adjusted gross income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(26) For taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to recovery property subject to the provisions of section two hundred eighty-F of the internal revenue code and recovery property placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty;

(26) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty.

(28) Upon the disposition of recovery property to which paragraph twenty-six of this subdivision applies, the amount, if any, by which the aggregate of the modifications described in paragraph twenty-five of subdivision (b) of this section attributable to such property exceeds the aggregate of the modifications described in paragraph twenty-six of this subdivision attributable to such property.

(28) Upon the disposition of property to which paragraph twenty-six of this subdivision applies, the amount, if any, by which the aggregate of the modifications described in paragraph twenty-five of subdivision (b) of this section attributable to such property exceeds the aggregate of

the modifications described in paragraph twenty-six of this subdivision attributable to such property.

(29) Deduction for two-earner married couples. (A) For the taxable year beginning in nineteen hundred eighty-seven, in the case of a husband and wife who each have qualified earned income and who have filed a joint return under subdivision (b) of section 11-1751 of this chapter for the taxable year, an amount equal to ten percent of the lesser of:

(i) thirty thousand dollars or

(ii) the qualified earned income of the spouse with the lower qualified earned income for such taxable year.

(B) For purposes of this paragraph, eligibility for the deduction provided for herein and the term qualified earned income shall be determined in the manner such eligibility and such qualified earned income would have been determined pursuant to the provisions of section two hundred twenty-one of the internal revenue code of nineteen hundred fifty-four had such provisions continued in effect for taxable years commencing after December thirty-first, nineteen hundred eighty-six as they were in effect immediately prior to the repeal of such section. Provided, however, the determination of such qualified earned income shall be made with regard only to the items therein included in city adjusted gross income, with such adjusted gross income determined without regard to this paragraph, and only with regard to the deductions and exclusions which are of the type properly allowable to or chargeable against such qualified earned income in such taxable year.

(30) The amount received by any person as an accelerated payment or payments of part or all of the death benefit or special surrender value under a life insurance policy as a result of any of the diagnoses specified in subparagraph (A) or (B) of paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, and the amount received by any person as a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, to the extent includible in gross income for federal income tax purposes.

(32) The portion of the fees paid during the taxable year by a taxpayer who is a resident of a continuing care retirement community, issued a certificate of authority pursuant to article forty-six of the public health law, attributable to the cost of providing long term care benefits pursuant to a continuing care contract. The portion of the fees so attributable shall be determined in accordance with regulations promulgated by the superintendent of insurance. The deduction may not exceed the limitation that would be applicable to the taxpayer for the taxable year, with respect to eligible long term care premiums, determined under paragraph ten of subsection (d) of section two hundred thirteen of the internal revenue code.

(33) Distributions, to the extent includible in adjusted gross income for federal income tax purposes, made to the taxpayer because of his or her status as a victim of Nazi persecution, as defined in P.L. 103-286, or as a spouse or a descendant in need of such victim.

(34) Items of income, to the extent includible in gross income for federal income tax purposes, attributable to, derived from or in any way related to assets stolen from, hidden from or otherwise lost to a victim of Nazi persecution, as defined in P.L. 103-286, immediately prior to, during and immediately after World War II, including, but not limited to interest on the proceeds receivable as insurance under policies issued to a victim of Nazi persecution, as defined in P.L. 103-286, by European insurance companies immediately prior to and during World War II.

Provided, however, this subtraction from federal adjusted income does not apply to assets acquired with such assets or with the proceeds from the sale of such assets. Provided, further, this paragraph is only applicable to a taxpayer who was the first recipient of such assets after their recovery and who is a victim of Nazi persecution, as defined in P.L. 103-286, or a spouse or a descendant of such victim.

(35) As provided in section thirty-eight of the tax law, any income or gain, to the extent it is included in federal adjusted gross income of an individual who is the sole proprietor of a qualified entity or a member of a limited liability company, a partner in a partnership or a shareholder in a New York subchapter S corporation that is a qualified entity as defined in section sixteen-v of the New York state urban development corporation act attributable to the operations of such qualified entity at its location in or as part of a New York state innovation hot spot, as defined in paragraph (a) of subdivision one of section sixteen-v of the New York state urban development corporation act.

(36) (A) In the case of a taxpayer who is a small business or a taxpayer who is a member, partner, or shareholder of a limited liability company, partnership, or New York S corporation, respectively, that is a small business, who or which has business income and/or farm income as defined in the laws of the United States, an amount equal to fifteen percent of the net items of income, gain, loss and deduction attributable to such business or farm entering into federal adjusted gross income, but not less than zero.

(B) (i) For the purposes of this paragraph, the term small business shall mean: (I) a sole proprietor who employs one or more persons during the taxable year and who has net business income or net farm income of greater than zero but less than two hundred fifty thousand dollars;

(II) a limited liability company, partnership, or New York S corporation that during the taxable year employs one or more persons and has net farm income that is greater than zero but less than two hundred fifty thousand dollars; or

(III) a limited liability company, partnership, or New York S corporation that during the taxable year employs one or more persons and has New York gross business income attributable to a non-farm business that is greater than zero but less than one million five hundred thousand dollars.

(ii) For purposes of this paragraph, the term New York gross business income shall mean: (I) in the case of a limited liability company or a partnership, New York source gross income as defined in subparagraph (b) or paragraph three of subsection (c) of section six hundred fifty-eight of the tax law, and, (II) in the case of a New York S corporation, New York receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of the tax law for the taxable year.

(C) To qualify for this modification in relation to a non-farm small business that is a limited liability company, partnership, or New York S corporation, the taxpayer's income attributable to the net business income from its ownership interests in non-farm limited liability companies, partnerships, or New York S corporations must be less than two hundred fifty thousand dollars.

(37) Any wages received by an individual as an employee of a business located within a tax-free NY area during the first five years of such business's ten year taxable period specified in subdivision (a) of section thirty-nine of the tax law to the extent included in federal

adjusted gross income and allowed under section thirty-nine of the tax law. During the second five years of such business's ten year taxable period, the first two hundred thousand dollars of such wages in the case of a taxpayer filing as a single individual, the first two hundred fifty thousand dollars of such wages in the case of a taxpayer filing as a head of household, and three hundred thousand dollars of such wages in the case of a taxpayer filing a joint return, to the extent included in federal adjusted gross income and allowed under section thirty-nine of the tax law.

(38) The amount of any award paid to a volunteer firefighter or volunteer ambulance worker from a length of service defined contribution plan or defined benefit plan as provided for in articles eleven-A, eleven-AA, eleven-AAA and eleven-AAAA of the general municipal law, to the extent that such award is includable in gross income for federal income tax purposes; provided, however, that such award is not distributed in the form of a lump sum distribution, as defined in subparagraph (D) of paragraph four of subsection (e) of section four hundred two of the internal revenue code and taxed under section six hundred three of the tax law; and provided, further, that such award is not distributed to a taxpayer who has not attained the age of fifty-nine and one-half years.

(39) The amount of any gain added back to federal adjusted gross income in a previous taxable year pursuant to paragraph thirty-nine of subdivision (b) of this section that is included in federal gross income for the taxable year.

(d) Modification for city fiduciary adjustment. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the city fiduciary adjustment determined under section 11-1719 of this subchapter.

(e) Modifications of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications required to be made under this section by a partner or by a shareholder of an S corporation, other than an S corporation which is a New York C corporation, which relate to partnership or S corporation items of income, gain, loss or deduction shall be determined under section 11-1717 of this subchapter and, in the case of a partner of a partnership doing an insurance business as members of the New York insurance exchange described in section six thousand two hundred one of the insurance law, under section 11-1717.1 of this subchapter.

(2) Shareholders of S corporations which are New York C corporations. In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of income, loss and deduction shall not apply, except for the modifications provided under paragraph nineteen of subdivision (b) and paragraph twenty-two of subdivision (c) of this section.

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of income, loss, deduction and reductions for taxes, as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, shall be adjusted in the same manner that the S corporation's items are adjusted under subdivision (s) of this section.

(f) Husband and wife. If husband and wife determine their federal income tax on a joint return but are required to determine their city income taxes separately, they shall determine their city adjusted gross

incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Optional modifications. Subject to the conditions provided in paragraphs three and four of this subdivision, at the election of the taxpayer there shall also be subtracted from federal adjusted gross income either or both of the items set forth in paragraphs one and two of this subdivision, except that only one of such items shall be subtracted with respect to any one item of property, and except that a subtraction of the item set forth in such paragraph two may not be taken with respect to taxable years commencing on or after January first, nineteen hundred eighty-nine.

(1) Depreciation with respect to any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such modification shall be allowed only upon condition that any depreciation or amortization allowed with respect to the same property in determining federal adjusted gross income shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section. The total of all deductions allowed pursuant to this paragraph in any taxable year or years with respect to any property described in paragraph three of this subdivision shall not exceed its cost or other basis and, with respect to property described in paragraph four of this subdivision, which is used in a business carried on both within and without the state shall not exceed its cost or other basis multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such depreciation is deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission.

(2) Expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or acquisition of any property such as described in paragraph three or four of this subdivision, and subject to the conditions provided therein, which is used or to be used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects. Such modification shall be allowed only on condition that, with respect to property described in paragraph four of this subdivision, which is used in a business carried on both within and without the state the deduction shall not exceed the expenditures multiplied by a percentage of the excess of the taxpayer's business income over its business deductions allocated to this state for the first year such expenditures are deducted. Such percentage shall be determined by apportionment and allocation under regulations of the tax commission, and for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes on account of such expenditures or on account of depreciation of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, shall be added to federal adjusted gross income pursuant to paragraph six of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate part of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income. With respect to property which is used or to be

used for research and development only in part, or during only part of its useful life, the modification allowable pursuant to this paragraph shall be limited to a proportionate part of the expenditures relating thereto. If a modification shall have been allowed pursuant to this paragraph for all or part of such expenditures with respect to any property, and such property is used for purposes other than research and development to a greater extent than originally reported, the taxpayer shall report such use in his or her return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such deduction was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by subdivision (c) of section 11-1783 of this chapter.

(3) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business: (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in subsection (d) of section one hundred seventy-nine of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subdivision (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clause (A), (B) or (C) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification

under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation, provided, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one of this subdivision shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(4) For purposes of this paragraph, such modifications shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business. The modifications provided for in paragraph one of this subdivision shall be allowed only with respect to tangible property which is: (A) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-eight or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, and then only with respect to that portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-eight, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-seven, or (C) acquired, constructed, reconstructed, or erected subsequent to December thirty-first, nineteen hundred sixty-eight, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-eight, and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraph four, five or six of subdivision (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-eight. A taxpayer shall be allowed a deduction under clause (A), (B) or (C) of the preceding sentence of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred seventy, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-eight, and at all times thereafter binding on the taxpayer. The modification provided for in paragraph two of this subdivision shall be allowed only with respect to tangible property: (A) the construction, reconstruction or erection of which is completed after December thirty-first, nineteen hundred sixty-seven, and then only with respect to that

portion of the basis thereof or the expenditures relating thereto which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (B) acquired after December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three. Provided, however, a modification under paragraph one of this subdivision shall be allowed with respect to property described in this paragraph only on condition that such property shall be principally used by the taxpayer in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing. Manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the manufacturing operation, including storage of material to be used in manufacturing and of the products that are manufactured. At the option of the taxpayer, air and water pollution control facilities which qualify for elective deductions under subdivision (h) of this section may be treated, for purposes of this paragraph, as tangible property principally used in the production of goods by manufacturing; processing; assembling; refining; mining; extracting; farming; agriculture; horticulture; floriculture; viticulture; or commercial fishing, in which event, a deduction shall not be allowed under such subdivision (h). However, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a modification under paragraph one of this subdivision with respect to tangible personal property leased to any other person or corporation, provided, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which a taxpayer uses for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, a modification under paragraph one of this subdivision shall be allowed in proportion to the part of the year such property is used by the taxpayer.

(5) If the modifications allowable for any taxable year pursuant to this subdivision exceed the taxpayer's city adjusted gross income, determined without the allowance of such modifications, the excess may be carried over to the following taxable year or years and may be subtracted from federal adjusted gross income for such year or years.

(6) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to paragraph one or two of this subdivision, the basis of such property shall be adjusted to reflect the modifications so allowed, and if the basis as so adjusted is lower than the adjusted basis of the same property for federal income tax purposes, there shall be added to federal adjusted gross income the amount of the difference between such adjusted bases.

(h) Optional modification for waste treatment facility expenditures. For taxable years commencing prior to January first, nineteen hundred

eighty-nine, at the election of the taxpayer, there shall also be subtracted from federal adjusted gross income expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of industrial waste treatment facilities and air pollution control facilities.

(1)(A) The term "industrial waste treatment facilities" shall mean facilities for the treatment, neutralization, or stabilization of industrial waste, as the term "industrial waste" is defined in section 17-0105 of the environmental conservation law, from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(B) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source, as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law, from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the air pollution control board, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

(2) Such modifications shall be allowed only:

(A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-five, or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, and

(B) on condition that such facilities have been certified by the commissioner of environmental conservation or his or her designated representative, in the same manner as provided for in section 17-0707 or 19-0309 of the environmental conservation law, as applicable, as complying with the provisions of such environmental conservation law, the state sanitary code and regulations, permits or orders promulgated pursuant thereto, and

(C) on condition that for the taxable year and all succeeding taxable years, any deductions allowed for federal income tax purposes for such expenditures or for depreciation or amortization of the same property, except to the extent that its basis may be attributable to factors other than such expenditures, be added to federal adjusted gross income pursuant to paragraph five of subdivision (b) of this section, or in case a modification is allowable pursuant to this paragraph for only a part of such expenditures, on condition that a proportionate amount of any such deductions allowed for federal income tax purposes be added to federal adjusted gross income, and

(D) where the election provided for in subdivision (g) of this section has not been exercised in respect to the same property.

(3)(A) If expenditures in respect to an industrial waste treatment facility or an air pollution control facility have been allowed as a

modification as provided herein and if within ten years from the end of the taxable year in which such modification was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its return for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783 of this chapter.

(B) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law, and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the tax commission may recompute the tax for the year or years for which such modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783 of this chapter.

(C) If a modification is allowed as herein provided for expenditures paid or incurred during any taxable year in respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to section 19-0309 of the environmental conservation law, the tax commission may recompute the tax for the year or years for which the facility is not or was not in compliance with the applicable provisions of the environmental conservation law, the state sanitary code or codes, rules, regulations, permits or orders issued pursuant thereto, and for which a modification was allowed, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph eight of subdivision (c) of section 11-1783 of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a modification has been allowed pursuant to this paragraph, such modification shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of federal adjusted gross income for such taxable year.

(i) In the case of mines, oil and gas wells and other natural deposits, any allowance for percentage depletion pursuant to section six hundred thirteen or section six hundred thirteen-A of the internal revenue code, shall be added to federal adjusted gross income. However, with respect to the property as to which such addition to federal adjusted gross income is required, an allowance for depletion shall be subtracted from federal adjusted gross income in the amount that would be deductible under section six hundred eleven of such code if the deduction for an allowance for depletion were computed without reference to such section six hundred thirteen or section six hundred thirteen-A. With respect to the computation of depletion pursuant to this subdivision, the basis for such computation shall be the basis for state income tax purposes provided for in subsection (i) of section six hundred twelve of the tax law. The portion of any gain from the sale or other disposition of such property having a higher adjusted basis for city income tax purposes than for federal income tax purposes, that does not

exceed such difference in basis, shall be subtracted from federal adjusted gross income.

(j) Modification for nonpublic school tuition. (1) General. An individual shall be entitled to subtract from his or her federal adjusted gross income an amount shown in the table set forth in this paragraph for his or her city adjusted gross income for the taxable year, computed without the benefit of this modification, multiplied by the number of his or her dependents, not exceeding three, attending a nonpublic school on a full-time basis for at least four months during the regular school year for the education of such dependent in grades one through twelve, provided such individual is allowed an exemption under section 11-1716 of this chapter for such dependent. Provided, further, that the modification under this paragraph may be taken only if such individual has paid at least fifty dollars for each such dependent in tuition to such nonpublic school for such education of such dependent. No taxpayer shall be entitled to the modification provided for in this paragraph if he or she claims a tuition reimbursement payment pursuant to article twelve-A of the education law.

| If city adjusted gross income is: | The amount allowable for each dependent is: |
|---|---|
| Less than $9,000 | $1,000 |
| 9,000 -- 10,999 | 850 |
| 11,000 -- 12,999 | 700 |
| 13,000 -- 14,999 | 550 |
| 15,000 -- 16,999 | 400 |
| 17,000 -- 18,999 | 250 |
| 19,000 -- 20,999 | 150 |
| 21,000 -- 22,999 | 125 |
| 23,000 -- 24,999 | 100 |
| 25,000 and over | -0- |

(2) Husband and wife. In determining the applicable city adjusted gross income of a husband and wife for purposes of the table set forth in paragraph one of this subdivision, the city adjusted gross income of a husband and wife shall be the aggregate of their city adjusted gross incomes for the taxable year, determined without the benefit of the modification provided for in this subdivision, and the number of dependents with respect to which this modification may be claimed shall be no more than three in the aggregate.

(3) Definitions. (A) "Tuition", as used in this subdivision, shall mean the amount actually paid during the taxable year by the taxpayer for the enrollment of a dependent during the regular school year at a nonpublic school.

(B) "Nonpublic school", as used in this subdivision, shall mean any non-profit elementary or secondary school in the state of New York, other than a public school, which: (i) is providing instruction in accordance with article seventeen and section thirty-two hundred four of the education law, (ii) has not been found to be in violation of title VI of the civil rights act of nineteen hundred sixty-four, 78 Stat. 252, 42 U.S.C. § 2000(d) and (iii) which is entitled to a tax exemption under sections five hundred one (a) and five hundred one (c) (3) of the federal internal revenue code of nineteen hundred fifty-four, as amended. The commissioner of education shall furnish to the tax commission by February first of each year, a certified list of nonpublic schools which comply with clause (i) of this subparagraph for the preceding calendar

year and shall provide such other assistance with respect to whether nonpublic schools come within clause (i) as the tax commission may require.

(C) "Regular school year", as used in this subdivision, shall mean the months of the taxable year exclusive of July and August.

(4) Additional information. Any claim for a modification under this subdivision shall be accompanied by such information as the tax commission may require.

(k) Modification for contributions to a qualified higher education fund. (1) A taxpayer may subtract from his or her federal adjusted gross income amounts which during the taxable year are contributed by him or her to a qualified higher education fund, as defined in paragraph three of this subdivision, established by him or her, limited to the product of seven hundred fifty dollars and the number of eligible beneficiaries, as defined in subparagraph (C) of paragraph three of this subdivision, as of the first or last day of the taxable year, whichever yields the higher limit. Provided, however, that a taxpayer whose taxable year began on January first, nineteen hundred seventy-eight may subtract from his or her federal adjusted gross income for such taxable year, amounts contributed by him or her to a qualified higher education fund during the fifteen month period beginning January first, nineteen hundred seventy-eight and ending April fifteenth, nineteen hundred seventy-nine. Contributions to a qualified higher education fund made during the period beginning January first, nineteen hundred seventy-nine and ending April fifteenth, nineteen hundred seventy-nine and subtracted from a taxpayer's federal adjusted gross income for the taxable year beginning January first, nineteen hundred seventy-eight shall be deemed to have been made during such taxable year. However, such number of eligible beneficiaries shall not include any individual who was a student at an institution of higher education during the previous taxable year. For purposes of this paragraph, the term "student" shall have the same meaning as that ascribed to it by paragraph four of subsection (e) of section one hundred fifty-one of the internal revenue code, except that the reference therein to "5 calendar months" shall be deemed to be a reference to "3 calendar months."

(2) A taxpayer who establishes a qualified higher education fund may subtract from his or her federal adjusted gross income amounts included in gross income for federal income tax purposes by reason of any income realized by the fund or because of any payment by the fund to, or on behalf of, an eligible beneficiary for the purpose specified in clause (i) of subparagraph (A) of paragraph three of this subdivision.

(3) For purposes of this subdivision, a qualified higher education fund is a fund established pursuant to a written plan described in subparagraph (A) of this paragraph, but only if the fund meets the requirements of subparagraph (B) of this paragraph.

(A) For purposes of this subdivision a "plan" means a plan established:

(i) solely for the purpose of defraying costs associated with attendance subsequent to graduation or separation from secondary school at an institution of higher education, as defined in subparagraph (F) of this paragraph, of one or more eligible beneficiaries, as defined in subparagraph (C) of this paragraph, such costs to include: (I) applicable tuition and fees, exclusive of fees levied as a penalty for laboratory breakage, dormitory damage and similar fees, (II) room and board as charged by the institution pursuant to a contract entered into by the institution and a student or, if no such contract is entered into, an

amount not exceeding one thousand five hundred dollars per year, which amount shall include any expenses of transportation, and (III) books, supplies and equipment,

(ii) which provides that no distribution shall be made by the fund, except upon termination thereof, other than to, or on behalf of, eligible beneficiaries for the purpose specified in clause (i) of this subparagraph,

(iii) which provides that upon termination of the fund all assets of the fund shall be distributed to the creator of the fund, to his or her estate or to a trust established for the purpose of making contributions to the fund, and

(iv) which prohibits contributions to the fund in excess of amounts which may be subtracted from federal adjusted gross income under paragraph one of this subdivision.

(B) A fund meets the requirements of this subparagraph only if:

(i) it constitutes a custodial account, the assets of which are held by a bank, as defined in paragraph one of subsection (d) of section four hundred one of the internal revenue code, an insurance company qualified to do business in this state, or another person who demonstrates, to the satisfaction of the tax commission, that the manner in which he or she will hold the assets will be consistent with the requirements of this subdivision, or

(ii) it is a trust.

In the case of a trust referred to in clause (ii) of this subparagraph, the assets may be held by a bank or other person who demonstrates to the satisfaction of the tax commission that the manner in which he or she will administer the trust will be consistent with the requirements of this subdivision. Such a trust shall not be disqualified under this subparagraph merely because a person other than the trustee so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments, including reinvestments, disposals and exchanges, or by disapproving proposed investments, including reinvestments, disposals and exchanges. Such a trust may use annuity, endowment or life insurance contracts of a life insurance company exclusively as the funding media of the trust, if so provided by regulations of the state tax commission, and if the life insurance company supplies annually such information about trust transactions as the tax commission shall by regulations prescribe. For purposes of this subdivision, the term "bank" shall have the same meaning ascribed to it by the last sentence of paragraph one of subsection (d) of section four hundred one of the internal revenue code.

(C) For purposes of this subdivision, the term "eligible beneficiary" means a person:

(i) having a relationship to the creator of the fund specified in paragraphs one, two, three or six of subsection (a) of section one hundred fifty-two of the internal revenue code,

(ii) who is a dependent of the creator of the fund pursuant to section one hundred fifty-two of the internal revenue code, or is a member of the armed forces of the United States on active duty, is a volunteer in the peace corps, or is a full-time volunteer under the domestic volunteer service act of 1973, and

(iii) who either: (I) has not attained the age of twenty-one, except that where his or her twenty-first birthday falls within a taxable year with respect to which a modification based on contributions to a qualified higher education fund with respect to which he or she is a beneficiary is allowed to a taxpayer, for purposes of this subclause such

beneficiary shall be deemed not to have attained the age of twenty-one until the day next succeeding the last day of such taxable year, or (II) is a student, as defined in paragraph four of subsection (e) of section one hundred fifty-one of the internal revenue code or, for a period of up to four years, is a member of the armed forces of the United States on active duty, is a volunteer in the peace corps, or is a full-time volunteer under the domestic volunteer service act of 1973. Where the determination of an individual's status as a student is required for a purpose other than determining the permissibility of a modification under this subdivision, an individual shall be deemed not to be a student as of the last day of any calendar year during which he or she fails to satisfy the requirements of subparagraphs (A) and (B) of paragraph four of subsection (e) of section one hundred fifty-one of the internal revenue code during each of five calendar months during such calendar year.

(D) A person who meets the requirements of subparagraph (C) of this paragraph shall cease to be an eligible beneficiary:

(i) if payments by the fund to him or her, or on his or her behalf, for the purpose specified in clause (i) of subparagraph (A) of this paragraph do not commence within five years after the date on which such person was graduated or separated from secondary school, excluding any period of up to four years during which an otherwise eligible beneficiary was a member of the armed forces of the United States on active duty, a volunteer in the peace corps, or in service as a full-time volunteer under the domestic volunteer service act of 1973, or

(ii) after the expiration of ten years from the date of such graduation or separation, excluding any period of up to four years during which an otherwise eligible beneficiary was a member of the armed forces of the United States on active duty, a volunteer in the peace corps, or in service as a full-time volunteer under the domestic volunteer service act of 1973, or

(iii) if within six months after either his or her eighteenth birthday or the date on which such fund is established, whichever is later, he or she does not file with the tax commission, on a form and in the manner prescribed by regulation, a notice of consent relating to the tax treatment of payments from a qualified higher education fund imposed under paragraph fourteen of subdivision (b) of this section.

(E) Where a fund is continued subsequent to its creator's death, an individual shall not cease to be an eligible beneficiary by reason of failure to fulfill the requirement set forth in clause (ii) of subparagraph (C) of this paragraph.

(F) For purposes of this subdivision, the term "institution of higher education" means an educational organization described in clause (ii) of subparagraph (A) of paragraph one of subsection (b) of section one hundred seventy of the internal revenue code,

(i) which provides an educational program for which it awards an associate, baccalaureate or higher degree or provides a program which is acceptable for full credit toward such a degree,

(ii) contributions to or for the use of which constitute charitable contributions within the meaning of section one hundred seventy (c) of the internal revenue code,

(iii) which is legally authorized to provide and does provide a program of postsecondary education, and

(iv) which is accredited by a nationally recognized accrediting agency or association listed by the United States commissioner of education.

(4) A qualified higher education fund shall terminate:

(A) if a contribution is made to the fund in excess of the amount allowable as a subtraction from federal adjusted gross income under paragraph one of this subdivision,

(B) if a distribution is made by the fund other than to, or on behalf of, an eligible beneficiary for the purpose specified in clause (i) of subparagraph (A) of paragraph three of this subdivision,

(C) if the plan ceases to have an eligible beneficiary, or

(D) in the absence of a testamentary disposition or inter vivos trust provision to the contrary, upon the death of the creator of the fund, or

(E) if the fund is otherwise terminated under the tax law.

(5) The tax commission may by regulation require the filing of a report annually by the creator of a qualified higher education fund or other person designated by such regulation, such report to set forth the amounts contributed to a qualified higher education fund, as well as the amount, purpose and beneficiary of each disbursement made therefrom. The tax commission may also by regulation require written notification annually to each beneficiary of such disbursements made on his or her behalf.

(6) The provisions of subparagraph (B) of paragraph four of this subdivision shall not apply in the case of a rollover. A rollover occurs where the creator of a qualified higher education fund withdraws all of the assets of such fund and not later than sixty days subsequent to such withdrawal establishes a new qualified higher education fund and deposits therein an amount equal to the value of the assets so withdrawn. Such deposit shall not constitute a contribution within the meaning of this subdivision. This paragraph shall not apply if at any time during the one year period ending on the date of such withdrawal from the qualified higher education fund the creator had made a similar withdrawal from another qualified higher education fund, both such funds having at least one beneficiary in common, where such prior withdrawal was followed by the establishment of a new qualified higher education fund such that a rollover was effected pursuant to the provisions of this paragraph.

(l) Qualified higher education fund. (1) Upon termination of a qualified higher education fund under subparagraph (A), (B) or (E) of paragraph four of subdivision (k) of this section, a taxpayer to whom the assets of the fund are required to be distributed pursuant to clause (iii) of subparagraph (A) of paragraph three of subdivision (k) of this section shall add to his or her federal adjusted gross income for the taxable year during which the terminating event occurs an amount equal to one hundred ten per centum of an amount which bears the same ratio to the value of the assets of such fund immediately prior to termination as the total contributions made to such fund by a city resident individual, estate or trust bears to the total contributions made to such fund. For purposes of this subdivision the value of the assets of the fund immediately prior to termination shall include the value of any distributions made to or on behalf of an eligible beneficiary who subsequently ceased to be an eligible beneficiary pursuant to clause (iii) of subparagraph (D) of paragraph three of subdivision (k) of this section.

(2) Payments made to or on behalf of an eligible beneficiary from a qualified higher education fund for the purpose specified in clause (i) of subparagraph (A) of paragraph three of subdivision (k) of this section shall be added to the federal adjusted gross income of the individual taxpayer to whom or on whose behalf the payment is made, in accordance with the following. For the first taxable year of such taxpayer in which no payment described in this paragraph is made with

respect to him or her and during which such taxpayer is not a student, as defined in paragraph four of subsection (e) of section one hundred fifty-one of the internal revenue code, treating the terms "individual" and "taxpayer" therein as referring to such taxpayer, or, for a period of up to four years, a member of the armed forces of the United States on active duty, a volunteer in the peace corps, or a full-time volunteer under the domestic volunteer service act of 1973, which taxable year commences after the last day of the first calendar year in which such a payment is made, one-fifth of the aggregate of all such payments theretofore made, such aggregate amount pro-rated, pursuant to regulations promulgated by the tax commission, according to the portion of the total contributions made to the fund prior to the first day of such taxable year which constitute amounts contributed by a city resident individual, estate or trust, shall be added to the federal adjusted gross income of such taxpayer for such taxable year and for each of the four succeeding taxable years in which no such payment is made and in which such taxpayer is not a student, as defined above, or, for a period of up to four years, a member of the armed forces of the United States on active duty, a volunteer in the peace corps, or a full-time volunteer under the domestic volunteer service act of 1973. If in a taxable year subsequent to a taxable year in which such addition to federal adjusted gross income is required, a payment described in this paragraph is made, one-fifth of the amount of such payment, pro-rated, pursuant to regulations promulgated by the tax commission, according to the portion of the total contributions made to the fund prior to the first day of such taxable year which constitute amounts contributed by a city resident individual, estate or trust, shall be added to the federal adjusted gross income of such taxpayer for each of the five immediately succeeding taxable years in which no such payment is made and in which such taxpayer is not a student, as defined above, or, for a period of up to four years, a member of the armed forces of the United States on active duty, a volunteer in the peace corps, or a full-time volunteer under the domestic volunteer service act of 1973.

(n) Where gain or loss is recognized for federal income tax purposes upon the disposition of stock or indebtedness of a corporation electing under subchapter s of chapter one of the internal revenue code:

(1) There shall be added to federal adjusted gross income the amount of increase in basis with respect to such stock or indebtedness pursuant to subsection (a) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (A) and (B) of paragraph one of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thirty-first, nineteen hundred eighty, for which the election provided for in subsection (a) of section six hundred sixty of the tax law was not in effect, and

(2) There shall be subtracted from federal adjusted gross income:

(A) the amount of reduction in basis with respect to such stock or indebtedness pursuant to subsection (b) of section thirteen hundred seventy-six of the internal revenue code as such section was in effect for taxable years beginning before January first, nineteen hundred eighty-three and subparagraphs (B) and (C) of paragraph two of subsection (a) of section thirteen hundred sixty-seven of such code, for each taxable year of the corporation beginning, in the case of a corporation taxable under article nine-A of the tax law, after December thir-

ty-first, nineteen hundred eighty, for which the election provided for in subsection (a) of section six hundred sixty of the tax law was not in effect and

(B) the amount of any modifications to federal gross income with respect to such stock pursuant to paragraph twenty-one of subdivision (b) of this section.

(o) Modifications for new business investment gains and certain new business investments.

1. For purposes of this subdivision, the following definitions shall apply:

(A) "New business investment gain" means gain from the sale of a new business investment issued to the taxpayer before January first, nineteen hundred eighty-eight, if:

(i) such new business investment is, in the hands of the person selling the same, whether or not the taxpayer, a capital asset as defined in section twelve hundred twenty-one of the internal revenue code of nineteen hundred fifty-four, as amended, and

(ii) such new business investment was held by such person for the period specified in paragraph two of this subdivision.

(B) "New business" means a corporation or partnership organized or formed under the laws of any state which:

(i) adopts a plan on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, to conduct a new business within the meaning and intent of this section and to issue new business investments, as defined in this subdivision, and

(ii) is, at the date of adoption of such plan, subject to taxation, whether or not any amount is owing, under section one hundred eighty-three or one hundred eighty-four of article nine of the tax law, or under article nine-A of the tax law or article twenty-three of the tax law, or would have been subject to tax under article twenty-three of such law, as such article was in effect on January first, nineteen hundred eighty, if such article were still in effect, and the first taxable period for which such new business became subject to such taxation commenced on or after July first, nineteen hundred eighty-one and before January first, nineteen hundred eighty-eight, and such first taxable period includes the date of adoption of such plan; if not so subject to taxation, the new business must be subject to taxation under such sections or articles for the first time within one year from the date of adoption of such plan, and

(iii) is conducted, or will be conducted, as evidenced by such plan, whereby at least ninety percent of the assets, valued at original cost, are located and employed in this state and eighty percent of the employees, in addition, in the case of a partnership, excluding partners, are principally employed in this state during each taxable period, or part thereof, as required by clause (iv) of this subparagraph, and

(iv) within ninety days after adoption of such plan, or, if a return is required, as part of such return, under such article nine, article nine-A or article twenty-three of the tax law, whichever is sooner, shall file a new business certificate with the tax commission attesting to whether it meets, if subject to taxation under such articles, or intends to meet, if not so subject, all of the conditions stated in clauses (i), (ii) and (iii) of this subparagraph within the time set forth therein. Thereafter, during the first four taxable years of such new business, along with, and as part of, any return required under such articles, such new business shall make and file a new business certificate for the period covered by such return attesting to whether it has

met the conditions specified in this subparagraph during the taxable period covered by such return. If no return is required under such articles, such certificate shall be filed annually on or before the fifteenth day of March which shall cover the twelve consecutive calendar month period ending on the last day of December immediately preceding such March fifteenth. If such new business fails to meet such conditions specified in this subparagraph, it shall, in addition, give notice of this fact, within the time prescribed by the tax commission, to the holders of its "new business investments." The tax commission shall prescribe the form and content of such new business certification and may require a new business to file such certificate for periods, even if no return is filed or required, but for this section, covering up to eight years from the date of adoption of such plan, as in its discretion, it deems the same necessary for the enforcement of this section, and

(v) Special rules:

(1) For any taxable period, in order to constitute a new business, a business enterprise must have derived more than sixty percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities.

(2) A new business does not include: (i) any new business of which twenty-five percent or more of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine of the tax law, or under article nine-A, or thirty-three of the tax law or (ii) any new business substantially similar in operation and in ownership, directly or indirectly, to a business entity, or entities, taxable, or previously taxable, under such section, such article, article twenty-three of the tax law or which would have been subject to tax under such article twenty-three, as such article was in effect on January first, nineteen hundred eighty, or the income, or losses, of which is, or was, includible under article twenty-two of such tax law whereby the intent and purpose of this section would be evaded.

(C) "New business investment" means and includes the following investments issued before January first, nineteen hundred eighty-eight by a new business pursuant to a plan described in clause (i) of subparagraph (B) of this paragraph for money or other property, other than stock or securities, on or before the expiration of the third taxable year of such new business, excluding any short period immediately preceding such taxable year because the new business was not in existence for an entire taxable year, or forty-two months from the adoption of such plan, whichever is sooner: (i) original issuance capital stock as part of a new issue, (ii) other original issuance securities of a new issue of a like nature as stocks which are designed as a means of investment and issued for the purpose of financing corporate enterprises and providing for a distribution of rights in such enterprises, (iii) debt obligations such as bonds and debentures for a term of at least one year, whether secured or unsecured, and (iv) certificates and other instruments representing proprietary interests, whether limited or otherwise, in and assumption of general liabilities, whether limited or otherwise, of a partnership enterprise.

2. A taxpayer may subtract from his federal adjusted gross income a portion of an amount constituting a new business investment gain, as follows:

| If new business investment held for: | The modification is equal to the following proportion of the gain includible in federal adjusted gross income: |
|---|---|
| At least four years, but less than five years | twenty-five percent |
| At least five years, but less than six years | fifty percent |
| At least six years | one hundred percent |

3. Where, within six months of the realization of a new business investment gain allowable as the basis of a modification under paragraph two of this subdivision, such modification is equal to less than one hundred percent of the portion of the gain includible in federal adjusted gross income and the taxpayer purchases a new business investment which is then held for a period of at least six months, the taxpayer may subtract from his or her federal adjusted gross income ten percent, but not an amount that will reduce the portion of such gain included in his or her New York income below zero, of the amount of such gain where the purchase price of the new business investment is equal to or greater than the proceeds of the sale giving rise to such gain. Where the purchase price of the new business investment is less than an amount equal to the proceeds of such sale, the modification allowable under this paragraph shall be equal to ten percent of an amount equal to the product of: (A) the amount of the gain and (B) a fraction the numerator of which is the purchase price of the new investment and the denominator of which is an amount equal to the proceeds of such sale. The modification allowable under this paragraph may be utilized, at the option of the taxpayer, with respect to the taxable year in which the new business investment gain is realized or the year containing the last day of the six-month retention period described in this paragraph.

4. The tax commission may prescribe such rules and regulations as may be necessary to carry out the purposes of this subdivision.

(p) New business investment deferral. For taxable years beginning before January first, nineteen hundred eighty-eight, at the option of the taxpayer, there may be subtracted from federal adjusted gross income a reinvested amount of long-term capital gain realized in a taxable year from the sale of a capital asset, as such term is defined in section twelve hundred twenty-one of the internal revenue code, which is not a new business investment. A reinvested amount of long-term capital gain shall mean an amount which bears the same ratio to the long-term capital gain realized from the sale of a capital asset which was includible in New York adjusted gross income as that portion of the sale proceeds which is reinvested, within one year from date of sale, in a New York new business bears to the total sale proceeds. For the purposes of this subdivision, a New York new business is a business enterprise which: (1) has been a taxpayer under article nine-A, twenty-two, or thirty-three of the tax law for no more than three taxable years, including short taxable years, (2) over fifty percent of the number of shares of stock that entitle the holders thereof to vote for the election of directors or trustees is not owned, directly or indirectly, by a taxpayer subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine of the tax law, or under article nine-A, thirty-two or thirty-three of the tax law, (3) is not substan-

tially similar in operation or ownership, directly or indirectly, to a business entity, or entities taxable, or previously taxable, under such sections, such articles, article twenty-three of the tax law or which would have been subject to tax under article twenty-three, as such article was in effect on January first, nineteen hundred eighty, or the income, or losses, of which is, or was, includible under article twenty-two of the tax law whereby the intent and purpose of this subdivision would be evaded, (4) locates and employs at least ninety percent of its assets in the state, (5) employs principally in the state eighty percent of its employees, and (6) derives less than forty percent of its gross income from dividends, interest, royalties, other than mineral, oil, or gas royalties or copyright royalties, annuities and (7) reports at least twenty-five hundred dollars in gross income in any taxable year. The reinvested amount must qualify as a capital asset as defined pursuant to section twelve hundred twenty-one of the internal revenue code and must be retained by the taxpayer for at least twelve months. The modification allowable under this subdivision shall be utilized with respect to the taxable year in which the twelve month retention period ends.

(q) An amount deferred under subdivision (p) of this section shall be added to federal adjusted gross income when the reinvestment in the New York new business which qualified a taxpayer for such deferral is sold.

(r) In the case of a sale or other disposition of property acquired from a decedent and valued by the executor of the estate of such decedent for the purposes of the tax under article twenty-six of the tax law pursuant to paragraph two of subsection (b) of section nine hundred fifty-four of the tax law, where such estate was insufficient to require the filing of a federal estate tax return, the amount necessary to properly reflect the gain or loss from such sale or other disposition which would have been realized under this chapter, had, in the case of clause (i) of this subdivision, a federal estate tax return been filed similarly valuing such property pursuant to section two thousand thirty-two of the internal revenue code, or in the case of clause (ii) of this subdivision, pursuant to section two thousand thirty-two-A of such code.

(s) New York S termination year. (1) General. In the case of a New York S termination year, the amount of any item of S corporation income, loss and deduction included in the shareholder's federal adjusted gross income and any reductions for taxes, as described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, shall be adjusted in accordance with the treatment provided in paragraph two or three of this subdivision.

(2) Pro rata allocation. Unless paragraph three of this subdivision applies, an equal portion of each S corporation item shall be assigned to each day of the S corporation's taxable year for federal income tax purposes. The portion of each such item thereby assigned to the S short year shall be treated as an item of a New York S corporation, and the portion of each such item thereby assigned to the C short year shall be treated as an item of an S corporation which is a New York C corporation.

(3) Normal tax accounting. The portion of each S corporation item assigned to the S short year and the C short year shall be determined using normal tax accounting rules if:

(A) there is a sale or exchange of fifty percent or more of the stock in such corporation during the New York S termination year or

(B) the corporation so elects, as provided in subparagraph (B) of paragraph two of subsection (s) of section six hundred twelve of the tax law.

(t) Related members expense add back. (1) Definitions. (A) Related member. "Related member" means a related person as defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, except that "fifty percent" shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any city, the maximum statutory rate of tax imposed by the city on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any city is zero where the related member's net income tax liability in said city is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a city in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that city, the maximum statutory rate of tax imposed by said city shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights, trade names, trade dress, service marks, mask works, trade secrets, patents and any other similar types of intangible assets as determined by the state commissioner of taxation and finance, and include amounts allowable as interest deductions under section one hundred sixty-three of the internal revenue code to the extent such amounts are directly or indirectly for, related to or in connection with the acquisition, use, maintenance or management, ownership, sale, exchange or disposition of such intangible assets.

(D) Valid business purpose. A valid business purpose is one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

(2) Royalty expense add backs. (A) For the purpose of computing city adjusted gross income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this subdivision shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, meets all of the following requirements: (I) the related member was subject to tax in this city or another city within the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such

portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the related member was subject to tax on or measured by its net income in this city or another city within the United States, or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section 11-1701 of this chapter for the taxable year.

(iii) The adjustment required in this subdivision shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner of finance, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this city; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this subdivision shall not apply if the taxpayer and the commissioner of finance agree in writing to the application or use of alternative adjustments or computations. The commissioner of finance may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(u) Alimony modifications. (1) In the case of applicable alimony or separate maintenance payments, the following modifications shall apply:

(A) There shall be subtracted from federal adjusted gross income any applicable alimony or separate maintenance payments made by the taxpayer during the taxable year.

(B) There shall be added to federal adjusted gross income any applicable alimony or separate maintenance payments received by the taxpayer during the taxable year.

(2) (A) The term "alimony or separate maintenance payments" means payments as defined under section seventy-one of the internal revenue code in effect immediately prior to the enactment of Public Law 115-97.

(B) The term "applicable alimony or separate maintenance payments" means payments made under an alimony or separation instrument, as defined in section seventy-one of the internal revenue code in effect immediately prior to the enactment of Public Law 115-97, that was executed after December thirty-first, two thousand eighteen, and any divorce or separation instrument executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

(v) Qualified moving expense reimbursement and moving expenses. (1) In the case of applicable qualified moving expense reimbursement and moving expenses, the following modifications shall apply:

(A) There shall be subtracted from federal adjusted gross income any applicable qualified moving expense reimbursement received by the taxpayer during the taxable year.

(B) There shall be subtracted from federal adjusted gross income any applicable moving expenses paid by the taxpayer during the taxable year.

(2) Applicable qualified moving expense reimbursement and moving expenses are those deductions as allowed by paragraph (g) of section one hundred thirty-two and section two hundred seventeen, respectfully, of the internal revenue code immediately prior to the enactment of Public Law 115-97.

§ 11-1713 City deduction of a resident individual. The city deduction of a city resident individual shall be his or her city standard deduction unless such resident individual elects to deduct his or her city itemized deduction under the conditions set forth in section 11-1715 of this chapter.

§ 11-1714 City standard deduction of a city resident individual. (a) Unmarried individual. For taxable years beginning after nineteen hundred ninety-five, the city standard deduction of a city resident individual who is not married nor the head of a household nor a surviving spouse nor an individual who is claimed as a dependent by another New York state taxpayer shall be seven thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be seven thousand four hundred dollars; for taxable years beginning in nineteen hundred ninety-four, such standard deduction shall be six thousand six hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-four, such standard deduction shall be six thousand dollars.

(b) Husband and wife filing jointly and surviving spouse. For taxable years beginning after nineteen hundred ninety-five, the city standard deduction of a husband and wife whose city taxable income is determined jointly or a surviving spouse shall be thirteen thousand dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be twelve thousand three hundred fifty dollars; for taxable years beginning in nineteen hundred ninety-four, such standard deduction shall be ten thousand eight hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-four, such standard deduction shall be nine thousand five hundred dollars.

(c) Head of household. For taxable years beginning after nineteen hundred ninety-five, the city standard deduction of an individual who is a head of household shall be ten thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be ten thousand dollars; for taxable years beginning in nineteen hundred ninety-four, such standard deduction shall be eight thousand one hundred fifty dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-four, such standard deduction shall be seven thousand dollars.

(d) Married individuals filing separately. For taxable years beginning after nineteen hundred ninety-five, the city standard deduction of a married individual filing a separate return shall be six thousand five hundred dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be six thousand one hundred seventy-five dollars; for taxable years beginning in nineteen hundred

ninety-four, such standard deduction shall be five thousand four hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-four, such standard deduction shall be four thousand seven hundred fifty dollars.

(e) Standard deduction of a dependent individual. For taxable years beginning after nineteen hundred ninety-five, the city standard deduction of a city resident individual whose federal exemption amount is zero shall be three thousand dollars; for taxable years beginning in nineteen hundred ninety-five, such standard deduction shall be two thousand nine hundred dollars; and for taxable years beginning after nineteen hundred eighty-nine and before nineteen hundred ninety-five, such standard deduction shall be two thousand eight hundred dollars.

(f) For taxable years beginning on or after January first, two thousand thirteen, the amounts of standard deductions set forth in this section shall be adjusted in the same manner as the amounts of standard deductions set forth in section six hundred fourteen of the tax law.

§ 11-1715 City itemized deduction of a city resident individual.

(a) General. If federal taxable income of a city resident individual is determined by itemizing deductions or claiming the federal standard deduction from his or her federal adjusted gross income, such resident individual may elect to deduct his or her city itemized deduction or claim his or her city standard deduction.

The city itemized deduction of a city resident individual means the total amount of his or her deductions from federal adjusted gross income allowed, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, as such deductions existed immediately prior to the enactment of Public Law 115-97 with the modifications specified in this section, except as provided for under subdivision (f) of this section.

(b) Husband and wife.

(1) A husband and wife, both of whom are required to file returns under this chapter, shall be allowed city itemized deductions only if both elect to take city itemized deductions.

(2) The total of the city itemized deductions of a husband and wife whose federal taxable income is determined on a joint return, but whose city taxable incomes are required to be determined separately, shall be divided between them as if their federal taxable incomes had been determined separately.

(c) Modifications reducing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be reduced by the amount of such federal deductions for:

(1) state and local general sales taxes as defined in subsection (b) of section one hundred sixty-four of the internal revenue code, to the extent included in federal itemized deductions or income taxes imposed by this city or any other taxing jurisdiction, except city earnings taxes on nonresidents that are imposed upon and paid by taxpayers for taxable years beginning after December thirty-first, nineteen hundred seventy and before January first, two thousand, to the extent that the amount of such tax exceeds the tax computed as if the rates were one-fourth of one percent of wages subject to tax and three-eighths of one percent of net earnings from self-employment subject to tax;

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this chapter; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is exempt

from tax under this chapter, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is exempt from tax under this chapter, to the extent that such expenses and premiums are deductible in determining federal taxable income.

(4) premiums paid for long-term care insurance to the extent that such premiums are deductible in determining federal taxable income.

(6) in the case of a shareholder of an S corporation:

(A) where the election provided for in subsection (a) of section six hundred sixty of the tax law has not been made, S corporation items of deduction included in federal itemized deductions, and

(B) in the case of a New York S termination year, the portion of such items assigned to the period beginning on the day the election ceases to be effective, as determined under subdivision (s) of section 11-1712 of this subchapter.

(d) Modifications increasing federal itemized deductions. The total amount of deductions from federal adjusted gross income shall be increased by:

(1) (Reserved.)

(2) interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such interest on indebtedness is not deductible for federal income tax purposes and is not subtracted from federal adjusted gross income pursuant to paragraph nine of subdivision (c) of section 11-1712 of this subchapter; and

(3) ordinary and necessary expenses paid or incurred during the taxable year for: (i) the production or collection of income which is subject to tax under this chapter but exempt from federal income tax, or (ii) the management, conservation or maintenance of property held for the production of such income, and the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this chapter but exempt from federal income tax, to the extent that such expenses and premiums are not deductible in determining federal adjusted gross income and are not subtracted from federal adjusted gross income pursuant to paragraph ten of subdivision (c) of section 11-1712 of this subchapter.

(4) allowable college tuition expenses, as defined in paragraph two of subsection (t) of section six hundred six of the tax law, multiplied by the applicable percentage. Such applicable percentage shall be twenty-five percent for taxable years beginning in two thousand one, fifty percent for taxable years beginning in two thousand two, seventy-five percent for taxable years beginning in two thousand three and one hundred percent for taxable years beginning after two thousand three. Provided, however, no deduction shall be allowed under this paragraph to a taxpayer who claims the credit provided under subsection (t) of section six hundred six of the tax law.

(e) Modification of partners and shareholders of S corporations. (1) Partners and shareholders of S corporations which are not New York C corporations. The amounts of modifications under subdivision (c) or under paragraph two or three of subdivision (d) required to be made by a partner or by a shareholder of an S corporation, other than an S corporation which is a New York C corporation, with respect to items of deduction of a partnership or S corporation shall be determined under section 11-1717 of this subchapter.

(2) Shareholders of S corporations which are New York C corporations. In the case of a shareholder of an S corporation which is a New York C corporation, the modifications under this section which relate to the corporation's items of deduction shall not apply, except for the modification provided under paragraph six of subdivision (c) of this section.

(3) New York S termination year. In the case of a New York S termination year, the amounts of the modifications required under this section which relate to the S corporation's items of deduction shall be adjusted in the same manner that the S corporation's items are adjusted under subdivision (s) of section 11-1712 of this subchapter.

(f) Except as otherwise provided under subdivision (g) of this section, the city itemized deduction otherwise allowable under this section shall be reduced by the sum of the amounts determined under paragraphs one and two of this subdivision.

(1) An amount equal to the city itemized deduction otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the city itemized deduction of an individual otherwise allowable under subdivision (a) of this section, multiplied by a percentage, such percentage to be determined by multiplying, for taxable years beginning in nineteen hundred eighty-eight, ten percent, and for taxable years beginning after nineteen hundred eighty-eight, twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's city adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

(g) Notwithstanding subdivision (a) of this section, the city itemized deduction for charitable contributions shall be the amount allowed under section one hundred seventy of the internal revenue code, as limited by this subdivision. (1) With respect to an individual whose New York adjusted gross income is over one million dollars but no more than ten million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and before two thousand twenty-five. With respect to an individual whose New York adjusted gross income is over one million dollars, the New York itemized deduction shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal

revenue code for taxable years beginning in two thousand nine or after two thousand twenty-four.

(2) With respect to an individual whose New York adjusted gross income is over ten million dollars, the New York itemized deduction shall be an amount equal to twenty-five percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning after two thousand nine and ending before two thousand twenty-five.

§ 11-1716 City exemptions of a city resident individual. (a) General. For taxable years beginning after nineteen hundred eighty-seven, a city resident individual shall be allowed a city exemption of one thousand dollars for each exemption for which such resident individual is entitled to a deduction for the taxable year under subsection (c) of section one hundred fifty-one of the internal revenue code; and for taxable years beginning in nineteen hundred eighty-seven, a city resident individual other than a taxpayer whose federal exemption amount is zero shall be allowed a city exemption of nine hundred dollars for each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes.

(b) Husband and wife. If the city income taxes of a husband and wife are required to be separately determined but their federal income tax is determined on a joint return, each of them shall be separately entitled to the city exemptions under subdivision (a) of this section to which each would be separately entitled for the taxable year if their federal income taxes had been determined on separate returns.

§ 11-1717 Resident partners and shareholders of S corporations. (a) Partner's and shareholder's modifications. In determining city adjusted gross income and city taxable income of a city resident partner or a city resident shareholder of an S corporation, other than an S corporation which is a New York C corporation, any modification described in subdivision (b), (c) or (d) of section 11-1712 of this subchapter, or subdivision (c) of section 11-1715 of this subchapter or paragraph two or three of subdivision (d) of such section, which relates to an item of partnership or S corporation income, gain, loss or deduction shall be made in accordance with the partner's distributive share or the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with his or her share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally. In the case of a New York S termination year, his or her pro rata share of any such item shall be determined under subdivision (s) of section 11-1712 of this subchapter.

(b) Character of items. Each item of partnership and S corporation income, gain, loss, or deduction shall have the same character for a partner or shareholder under this subchapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if realized directly from the source from which realized by the partnership or S corporation or incurred in the same manner as incurred by the partnership or S corporation.

(c) City tax avoidance or evasion. Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the

partnership agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

§ 11-1717.1 Residents; special provisions. Notwithstanding any other provisions of this chapter, the city adjusted gross income and the city taxable income of a resident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, shall not include any item of income, gain, loss or deduction of such business, which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes. Provided however, such individual's city adjusted gross income shall include his or her distributive or pro rata share of the allocated entire net income as determined by such business under sections fifteen hundred three and fifteen hundred four of the tax law. In the event such allocated entire net income is a loss, there shall not be subtracted from federal adjusted gross income in computing city adjusted gross income such individual's distributive share of such loss.

§ 11-1718 City taxable income of a city resident estate or trust. The city taxable income of a city resident estate or trust means its federal taxable income as defined in the laws of the United States for the taxable year, with the following modifications:

(2) There shall be subtracted the modifications described in paragraphs four and five of subdivision (c) of section 11-1712 of this subchapter, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(3) There shall be added or subtracted, as the case may be, the share of the estate or trust in the city fiduciary adjustment determined under section 11-1719 of this subchapter.

(4) There shall be added or subtracted, as the case may be, the modifications described in paragraphs six, ten, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-nine, thirty-four and thirty-five of subdivision (b) and in paragraphs eleven, thirteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of section 11-1712 of this subchapter.

(5) In the case of a trust, there shall be added the amount of any includible gain, reduced by any deductions properly allocable thereto, upon which tax is imposed for the taxable year pursuant to section six hundred forty-four of the internal revenue code.

§ 11-1719 Share of a resident estate, trust or beneficiary in city fiduciary adjustment. (a) General. An adjustment shall be made in determining city taxable income of a city resident estate or trust under section 11-1718 of this subchapter, or city adjusted gross income of a city resident beneficiary of any estate or trust under subdivision (d) of section 11-1712 of this subchapter, in the amount of the share of each in the city fiduciary adjustment as determined in this section.

(b) Definition. The city fiduciary adjustment shall be the net amount of the modifications described in section 11-1712 of this subchapter, including subdivision (d) if the estate or trust is a bene-

ficiary of another estate or trust, in subdivision (c) and paragraphs two and three of subdivision (d) of section 11-1715 of this subchapter, and in subdivision (e) of this section, which relate to items of income, gain, loss or deduction of an estate or trust. The net amount of such modifications shall not include:

(1) Any modification described in paragraphs one and two of subdivision (b) and paragraphs one, two, four, five, six, and seven of subdivision (c) of section 11-1712 of this subchapter with respect to any amount which, pursuant to the terms of the governing instrument, is paid or permanently set aside for a charitable purpose during the taxable year, and

(2) Any modification described in paragraph four or five of subdivision (c) of section 11-1712 of this subchapter, with respect to gains from the sale or other disposition of property, to the extent such gains are excluded from federal distributable net income of the estate or trust.

(c) Shares of city fiduciary adjustment.

(1) The respective shares of an estate or trust and its beneficiaries, including, solely for the purpose of this allocation, nonresident beneficiaries, in the city fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the estate or trust.

(2) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary in the city fiduciary adjustment shall be in proportion to his or her share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of the city fiduciary adjustment shall be allocated to the estate or trust.

(d) Alternate attribution of modifications. The tax commission may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed, as may be appropriate and equitable. Such method may be used by the fiduciary in his or her discretion whenever the allocation of the fiduciary adjustment pursuant to subdivision (c) of this section would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) Additional modifications. (1) For any taxable year beginning after December thirty-first, two thousand seventeen, and before January first, two thousand twenty-six, to the extent that the estate or trust claimed a deduction for taxes under section one hundred sixty-four of the internal revenue code that was limited to ten thousand dollars as provided in subparagraph (B) of paragraph six of subdivision (b) of such section one hundred sixty-four or was denied as a result of subparagraph (A) of paragraph six of subdivision (b) of such section one hundred sixty-four, there shall be subtracted the taxes paid or accrued in that taxable year by an estate or trust that the estate or trust was not able to deduct for federal income tax purposes because of such limitation or denial, other than state and local sales taxes and income taxes described in paragraph one of subdivision (c) of section 11-1715 of this subchapter. In determining the makeup of the ten thousand dollars of deduction claimed by the estate or trust under section one hundred sixty-four of the internal revenue code, it shall be presumed that the ten thousand dollars of deduction first comprises the state and local sales taxes or income taxes the estate or trust accrued or paid during the taxable year.

(2) For any taxable year beginning after December thirty-first, two thousand seventeen, and before January first, two thousand twenty-six, there shall be subtracted the miscellaneous itemized deductions as described in and limited by section sixty-seven of the internal revenue code, but excluding the deductions described in subsection (e) of section sixty-seven of such code, but determined without regard to subsection (g) of such section.

(3) For any taxable year, there shall be added the amount of any deduction allowed pursuant to section one hundred ninety-nine-A of the internal revenue code.

§ 11-1721 Credits to trust beneficiary receiving accumulation distribution. (a) General. A city resident beneficiary of a trust whose city adjusted gross income includes all or part of an accumulation distribution by such trust, as defined in section six hundred sixty-five of the internal revenue code, including a beneficiary who is required to make the modification required by paragraph thirty-six of subdivision (b) of section 11-1712 of this subchapter, shall be allowed (1) a credit against the tax otherwise due under this chapter for all or a proportionate part of any tax paid by the trust under this chapter or under former title T of chapter forty-six of the code of the preceding municipality, as it was in effect prior to September first, nineteen hundred eighty-six, for any preceding taxable year which would not have been payable if the trust had in fact made distributions to its beneficiaries at the times and in the amounts specified in section six hundred sixty-six of the internal revenue code; and (2) a credit against the taxes imposed by this chapter for the taxable year for any income tax imposed for the taxable year or any prior taxable year by another state of the United States, a political subdivision thereof, or the District of Columbia, upon income both derived therefrom and subject to tax under this chapter, provided that the amount of the credit shall not exceed the percentage of the tax otherwise due under this chapter determined by dividing the portion of the income that is both taxable to the trust in such other jurisdiction and taxable to the beneficiary under this chapter by the total amount of the beneficiary's New York city income.

(b) Limitation. The credits under this section shall not reduce the tax otherwise due from the beneficiary under this chapter to an amount less than would have been due if the accumulation distribution or his or her part thereof were excluded from his or her city adjusted gross income.

§ 11-1724 Computation of separate tax on the ordinary income portion of lump sum distributions received by city resident individuals, estates and trusts. (a) Amount of separate tax. The amount of tax imposed under section 11-1703 of this chapter for any taxable year, with respect to the ordinary income portion of a lump sum distribution received by a city resident individual, estate or trust is an amount equal to five times the tax which would be imposed by section 11-1701 of this chapter at the rate set forth in paragraph three of subdivision (a) or (b), whichever may be applicable, if the recipient of such lump sum distribution were an individual referred to in such subdivision and the city taxable income were an amount equal to one-fifth of the excess of:

(1) the total taxable amount of the lump sum distribution for the taxable year, over

(2) the minimum distribution allowance.

(b) Minimum distribution allowance. For purposes of this section, the minimum distribution allowance shall be that which is calculated accord-

ing to subparagraph (C) of paragraph one of subsection (e) of section four hundred two of the internal revenue code.

(c) Multiple distributions and distributions of annuity contracts. For purposes of this section, the rules concerning multiple distributions and distributions of annuity contracts as specified by paragraph two of subsection (e) of section four hundred two of the internal revenue code shall be applicable, except that references to "paragraph one (A)" shall be deemed to be references to this section, and except that only lump sum distributions, or portions thereof, and distributions of annuity contracts subject to tax under this chapter shall be included, and except that references to the secretary shall be deemed to be references to the tax commission.

(d) Definitions and special rules. For purposes of this section, the following provisions shall apply, to the extent applicable to the taxpayer's federal tax on lump sum distributions: (1) the definitions and special rules as specified in paragraph four of subsection (e) of section four hundred two of the internal revenue code; and (2) the special rules relating to (A) individuals who have attained the age of fifty before January first, nineteen hundred eighty-six and (B) capital gains, as specified in paragraphs three, four, five and six of subsection (h) of section eleven hundred twenty-two of the tax reform act of nineteen hundred eighty-six as enacted by public law 99-514, but (i) in the event that paragraph three of such subsection is applicable, clause (ii) of subparagraph (B) of such paragraph shall be applied using a rate of one and seventy-two hundredths percent, and (ii) in the event that paragraph five of such subsection is applicable, the words "five" and "one-fifth" in subdivision (a) of this section shall be read as "ten" and "one-tenth", respectively, and subdivision (a) of this section shall be applied by using the rate of tax specified in subdivision (a) of section 11-1702 of this chapter as such subdivision was in effect for taxable years beginning in nineteen hundred eighty-six.

## SUBCHAPTER 3
## RETURNS AND PAYMENT OF TAX

§ 11-1751 Returns and liabilities. (a) General. On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this chapter shall be made and filed by or for every city resident individual, estate or trust required to file a New York state personal income tax, including a separate tax on the ordinary income portion of lump sum distributions, return for the taxable year.

(b) Husband and wife. (1) If the New York state personal income tax liability of husband and wife is determined on a separate return, their city personal income tax liabilities and returns shall be separate.

(2) If the New York state personal income tax liabilities of husband and wife, other than a husband and wife described in paragraph three of this subdivision, are determined on a joint return, they shall file a joint city personal income tax return, and their tax liabilities shall be joint and several except as provided in paragraphs four and five of this subdivision and in subsection (e) of section six hundred eighty-five of the tax law.

(3) If the New York state personal income tax liabilities of husband and wife, other than a husband and wife described in paragraph three of this subdivision are determined on a joint return, they shall file a joint city personal income tax return, and their tax liabilities shall

be joint and several except as provided in paragraph five of this subdivision, section 11-1755 of this subchapter and subsection (e) of section six hundred eighty-five of the tax law.

(4) If either husband or wife is a city resident and the other is a city nonresident, and their New York state personal income tax liabilities are determined on a joint return:

(A) they may elect to file a joint city personal income tax return as if both were residents, in which case their city personal income tax liabilities shall be joint and several except as provided in paragraphs four and five of this subdivision and in subsection (e) of section six hundred eighty-five of the tax law, or

(B) they may elect to file a joint city personal income tax return as if both were residents, in which case their city personal income tax liabilities shall be joint and several except as provided in paragraph five of this subdivision, section 11-1755 of this subchapter and subsection (e) of section six hundred eighty-five of the tax law, or

(C) the resident spouse may elect to file a separate city personal income tax return, in which case his or her city personal income tax liability shall be determined as if he or she were filing a separate New York state personal income tax return.

(5) If a joint return has been made under this subdivision for a taxable year and only one spouse is liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or an amount of a default in repayment of a guaranteed student, state university or city university loan of which the state commissioner of taxation and finance has been notified pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-1 of the tax law, as the case may be, then an overpayment and interest thereon shall be credited against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan, unless the spouse not liable for such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan demands, on a declaration made in accordance with regulations or instructions prescribed by the state commissioner of taxation and finance, that the portion of the overpayment and interest attributable to such spouse not be credited against the past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan owed by the other spouse. Upon such demand, the state commissioner of taxation and finance shall determine the amount of the overpayment attributable to each spouse in accordance with regulations prescribed by the state commissioner of taxation and finance and credit only that portion of the overpayment and interest thereon attributable to the spouse liable for past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or amount of a default in repayment of a guaranteed student, state university or city university loan against such past-due support, or a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or such amount of a default in repayment of a guaranteed student, state university or city university loan. Such demand may be filed (A) with the return of the spouse not liable for past-due support or past-due legally enforceable debt, or a city of New

York tax warrant judgment debt, or default in repayment of a guaranteed student, state university, or city university loan or (B) with the commissioner of taxation and finance within ten days after notification is provided such spouse by the commissioner of taxation and finance pursuant to subdivision seven of section one hundred seventy-one-c, subdivision six of section one hundred seventy-one-d, subdivision seven of section one hundred seventy-one-e, subdivision seven of section one hundred seventy-one-f or subdivision six of section one hundred seventy-one-1 of the tax law.

(6) The state commissioner of taxation and finance shall clearly alert married taxpayers, on all appropriate publications and instructions, that their liability for tax will be joint and several if they file joint income tax returns. The state commissioner of taxation and finance shall include notice of an individual's right to relief from joint and several liability pursuant to section six hundred fifty-four of the tax law in the disclosure of rights statement required by section three thousand four of the tax law and in any notice regarding collection of tax due with respect to a liability on a joint return.

(c) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(d) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property other than a receiver in possession of only a part of his or her property, or by his or her duly authorized agent.

(e) Estates and trusts. The return for an estate or trust shall be made and filed by the fiduciary.

(f) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(h) Tax a debt. Any tax under this chapter, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the city of New York.

(i) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section 11-1758 of this subchapter.

§ 11-1752 Time and place for filing returns and paying tax. (a) Except as provided in subdivision (b) of this section, a person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner of taxation and finance on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return. The commissioner shall prescribe by regulation the place for filing any return, statement, or other document required pursuant to this chapter and for payment of any tax.

(b) The commissioner of taxation and finance may allow individuals who have income only from wages, salaries, tips and like remuneration for services performed as an employee, interest, dividends and unemployment compensation to elect to have the commissioner compute the tax due. To provide for expeditious and uniform administration of the tax computa-

tions which involve numerous variables, the commissioner may further qualify, with regard to period of residency, deductions, credits, exemptions, amount and character of gross income, and any other appropriate factors relative to calculation of tax, those individuals who may elect to have their taxes computed by the commissioner. Any such election shall be made on the form prescribed by the commissioner for this purpose. If a qualified taxpayer elects to have the commissioner compute the tax, the amount determined by the commissioner shall be paid (i) within ten days from the date of the issuance of a notice and demand therefor or (ii) on the date fixed for filing such return, determined without regard to any extension of time for filing, whichever is later.

§ 11-1753 Signing of returns and other documents. (a) General. Any return, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the tax commission. The fact that an individual's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 11-1754 Change of resident status during year. (a) General. If an individual changes his or her status during his or her taxable year from city resident to city nonresident, or from city nonresident to city resident, such individual shall file one return as a resident for the portion of the year during which he or she is a city resident, and a return under chapter nineteen of this title, for the portion of the year during which he or she is a city nonresident, subject to such exceptions as the tax commission may prescribe by regulation.

(b) City taxable income as city resident. The city taxable income for the portion of the year during which he or she is a city resident shall be determined, except as provided in subdivision (c) of this section, as if his or her taxable year for federal income tax purposes were limited to the period of his or her city resident status.

(c) Special accruals.

(1) If an individual changes his or her status from city resident to city nonresident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible, whether or not because of an election to report on an installment basis, or allowable for city income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections 11-1712 and 11-1715 of this chapter as if such accrued items were includible or allowable for federal income tax purposes.

(2) If an individual changes his or her status from city nonresident to city resident, he or she shall, regardless of his or her method of

accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, other than items derived from or connected with New York state sources, if not otherwise properly includible, whether or not because of an election to report on an installment basis, or allowable for federal income tax purposes for such portion of the taxable year or for a prior taxable year. The amounts of such accrued items shall be determined with the applicable modifications described in sections 11-1712 and 11-1715 of this chapter as if such accrued items were includible or allowable for federal income tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subdivision shall be taken into account in determining city adjusted gross income or the city itemized deduction for any subsequent taxable period.

(4) The accruals under this subdivision shall not be required if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subdivision in city adjusted gross income for one or more subsequent taxable years as if the individual had not changed his or her resident status.

(5) The provisions of subdivisions (a), (b) and paragraphs one through four of this subdivision shall apply if an individual changes his or her status from a city resident to city nonresident or from a city nonresident to a city resident during a taxable year, or at the beginning of a taxable year, as a result of a change of domicile or as a result of becoming a city resident or city nonresident based on the definition contained in subparagraph (B) of paragraph one of subdivision (b) of section 11-1705 of this chapter.

(6) Except as provided in this paragraph, where an individual who is a member of a partnership or shareholder of an S corporation changes status from city resident to city nonresident, or from city nonresident to city resident, the portion of the distributive or pro rata share of income, gain and loss, less deductions attributable thereto, from a partnership or S corporation shall be allocated to the resident and nonresident periods of the partner or shareholder on a proportionate basis throughout the taxable year of the partnership or S corporation.

In such event, the portion of the distributive or pro rata share allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the partnership or S corporation over the total number of days in the reporting period of the partnership or S corporation. Provided, however, that the commissioner may require, or the individual may elect, to accrue to the period of residence, and the period of nonresidence, the portion of the distributive or pro rata share of partnership or S corporation income, gain and loss, less deductions attributable thereto, accruing during the individual's respective resident and nonresident periods in a manner that reflects the date of accrual of said income, gain and loss by the partnership or S corporation.

(7) Except as provided in this paragraph, where an individual who is a beneficiary of an estate or trust changes status from city resident to city nonresident, or from city nonresident to city resident, the portion of any estate or trust income credited, distributable, payable or required to be distributed to such beneficiary shall be allocated to the resident and nonresident periods of the beneficiary on a proportionate basis throughout the taxable year of the estate or trust. In such event,

the portion of such estate or trust income allocated to the period of residency shall be determined based on the number of days of residency within the reporting period of the estate or trust over the total number of days in the reporting period of the estate or trust. Provided, however, that the commissioner may require, or the beneficiary may elect, to accrue to the period of residence, and the period of nonresidence, the portion of such estate or trust income accruing during the beneficiary's respective resident and nonresident periods in a manner that reflects the date of accrual of said estate or trust income by the estate or trust.

(d) City minimum tax. Where two returns are required under this section, the total of the taxes due thereon shall not be less than would be due if the city taxable incomes reportable on the two returns were included in one return.

(e) Proration. Where a return is required under this section, the city personal exemptions allowable under section 11-1716 of this chapter shall be prorated, under regulations of the tax commission, to reflect the portions of the entire taxable year during which the individual was a resident.

(f) Standard deduction. Where a return is required under this section, the city standard deduction allowable on such return shall be the amount allowed pursuant to the provisions of section 11-1714 of this chapter, prorated according to the period covered by the return.

(g) Trusts. If the status of a trust changes during its taxable year from city resident to city nonresident, or from city nonresident to city resident, the fiduciary shall file one return as a city resident trust for the portion of the year during which the trust is a city resident trust, and one return under chapter nineteen of this title for the portion of the year during which the trust is a city nonresident trust, subject to such exceptions as the tax commission may prescribe by regulations. The provisions of subdivisions (b), (c), (d) and (e) of this section shall apply for the purposes of this subdivision, except to the extent that any of such provisions may be inconsistent with the provisions of section 11-1718 of this chapter, and except that the term "individual" shall be read as "trust", the term "city adjusted gross income" shall be read as "city taxable income", reference to "gain" shall include any modification for includible gain under subdivision five of section 11-1718 of this chapter, and the phrase "personal exemptions allowable under section 11-1716 of this chapter" shall be read as "city exemptions allowable under section 11-1718 of this chapter."

(h) Lump sum distributions. If the status of a taxpayer changes during his or her taxable year from city resident to city nonresident, or from city nonresident to city resident, the taxpayer shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status the total taxable amount of a lump sum distribution accruing prior to the change of status, if the ordinary income portion thereof is not otherwise subject to tax under section 11-1703 of this chapter for such portion of the taxable year or for a prior taxable year. No ordinary income portion of a lump sum distribution the total taxable amount of which is accrued under this subdivision shall be subject to tax under section 11-1703 of this chapter for any subsequent taxable period. The accrual under this subdivision shall not be required if the taxpayer files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the payment of tax under section 11-1703 of this chapter, with respect to

such amount accruable under this subdivision, for a subsequent taxable year as if the taxpayer had not changed its resident status.

(i) Deduction for two-earner married couples. Where a return is required under this section, the amount of deduction under paragraph twenty-nine of subdivision (c) of section 11-1712 of this chapter shall be equal to ten percent of the lesser of:

(1) thirty thousand dollars, pro rated according to the period covered by the return or

(2) the qualified earned income of the spouse with the lower qualified earned income for the period covered by the return.

§ 11-1755 Relief from joint and several liability on joint return. (a) General. The provisions of section six thousand fifteen of the internal revenue code applicable to the liability of individuals who file joint income tax returns shall apply to the same extent as if such section of such code were contained in and made part of this section, except to the extent that any provision of such section is either inconsistent with or not relevant to this chapter and except as modified in subdivision (b) of this section, or with such other modifications as may be necessary to adapt the language of such provisions to the provisions of this chapter.

(b) Modifications. Section six thousand fifteen of the internal revenue code shall be read as modified by this subdivision.

(1) "Secretary" shall be read as "state commissioner of taxation and finance".

(2) "Internal revenue service" shall be read as "department of taxation and finance".

(3) "Tax court" shall be read as "division of tax appeals".

(4) In the heading of subsection (a) and in clause (ii) of subparagraph (A) of paragraph three of subsection (c), the phrase "section 6013(d)(3)" shall be read as "paragraphs two and three of subdivision (b) of section 11-1751 of this chapter".

(5) In paragraph three of subsection (b), the phrase "section 6662(d)(2)(A)" shall be read as "subdivision (p) of section 11-1785 of this chapter".

(6) In subparagraph (B) of paragraph two of subsection (d), the phrase "section 1 or 55" shall be read as "section 11-1701 of this chapter".

(7) In clause (i) of subparagraph (B) of paragraph one of subsection (e), the phrase "section 6851 or 6861" shall be read as "section 11-1794 of this chapter" and "section 7485" shall be read as "subdivision (c) of section 11-1790 of this chapter".

(8) In paragraph two of subsection (e), the phrase "section 6502" shall be read as "section one hundred seventy-four-a of the tax law and section 11-1792 of this chapter".

(9) In subparagraph (A) of paragraph three of subsection (e), the phrase "section 6512(b), 7121, or 7122" shall be read as "subdivision fifteenth, eighteenth, eighteenth-a or eighteenth-d of section one hundred seventy-one of the tax law and subdivision (b) of section 11-1789 of this chapter".

(10) The following provisions of such section six thousand fifteen shall be disregarded: (A) The phrase "notwithstanding the provisions of section 7421(a)" contained in clause (ii) of subparagraph (B) of paragraph one of subsection (e); and (B) subparagraph (C) of paragraph three of subsection (e).

(c) Federal determination. If an individual is relieved of a federal income tax liability pursuant to subsection (b) of section six thousand fifteen of the internal revenue code, there shall be a rebuttable

presumption that such individual shall also be entitled to equivalent relief from liability under this section, to the extent that such individual has an understatement of tax under this chapter for the same taxable year that is attributable to the same erroneous item or items to which the individual's federal income tax liability was attributable.

§ 11-1757 Extensions of time. (a) General. The commissioner of taxation and finance may grant a reasonable extension of time for payment of tax or estimated tax, or any installment, or for filing any return, statement, or other document required pursuant to this chapter, on such terms and conditions as it may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to clause (ii) of subparagraph (A) of paragraph one of subdivision (b) of section 11-1705 of this chapter, no such extension for filing any return, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the tax commission may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount for which the extension of time for payment is granted on such terms and conditions as the tax commission may require.

§ 11-1758 Requirements concerning returns, notices, records and statements. (a) General. The tax commission may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commission may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commission may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Identifying numbers. (1) When required by regulations prescribed by the tax commission:

(A) Inclusion in returns. Any person required under the authority of this chapter to make a return, statement, or other document shall include in such return, statement or other document such identifying number as may be prescribed for securing proper identification of such person.

(B) Furnishing number to other persons. Any person with respect to whom a return, statement or other document is required under the authority of this chapter to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his or her proper identification.

(C) Furnishing number of another person. Any person required under the authority of this chapter to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(2) Limitation.

(A) Except as provided in subparagraph (B) of this paragraph, a return of any person with respect to his or her liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of subparagraphs (B) and (C) of paragraph one of this subdivision as a return, statement or other document with respect to another person.

(B) For purposes of subparagraphs (B) and (C) of paragraph one of this subdivision, a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof,

shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(3) Requirement of information. For purposes of this section, the tax commission is authorized to require such information as may be necessary to assign an identifying number to any person.

(c) Partnerships and S corporations.

(1) Partnerships. Every partnership having a city resident partner shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year except that the due date for the return of a partnership consisting entirely of nonresident aliens shall be the date prescribed for the filing of its federal partnership return for the taxable year. For purposes of this paragraph, "taxable year" means a year or a period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(2) S corporations. Every S corporation for which the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect shall make a return setting forth all items of income, loss and deduction and such other pertinent information as the tax commission may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the third month following the close of each taxable year.

(d) Information at source. The tax commission may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this chapter. Such returns may be required of any persons, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(e) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualification as such to the tax commission, as may be required by regulation.

(g) Requirements applicable to tax return preparer.

(1) Signature of tax return preparer. Any individual who is a tax return preparer and prepares any return or claim for refund, shall sign such return or claim for refund in accordance with regulations or instructions prescribed by the commissioner of taxation and finance.

(2) Furnishing identifying numbers. Any return or claim for refund which is prepared by a tax return preparer shall include the identifying number of the preparer required by paragraph one of this subdivision to sign such return or claim for refund. In addition, where such individual preparer is an employee of an employer which is a tax return preparer with respect to such return or claim for refund, or where such preparer is a partner in a partnership which is a tax return preparer with respect to such return or claim for refund, then such return or claim

for refund shall also include the identifying number of such employer or partnership. Such identifying numbers shall be as prescribed by the commissioner of taxation and finance in order to secure the proper identification of such individual preparer, partnership or employer. The responsibility for the inclusion of such identifying numbers shall be as set forth in paragraph two of subdivision (t) of section 11-1785 of this chapter.

(3) Furnishing copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund shall furnish a completed copy of such return or claim for refund to the taxpayer not later than the time such return or claim for refund is presented for such taxpayer's signature.

(4) Copy or list to be retained by tax return preparer. Any person who is a tax return preparer with respect to any return or claim for refund shall for a three year retention period described in paragraph nine of this subdivision:

(A) retain a completed copy of such return or claim for refund, or retain, on a list, the name and identification number of the taxpayer for whom such return or claim was prepared, and

(B) make such copy or list available for inspection upon request by the commissioner of taxation and finance.

(5) Tax return preparer defined. For purposes of this chapter, the term "tax return preparer" means any person who prepares for compensation, or who employs or engages one or more persons to prepare for compensation any return or claim for refund. The preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund. Where an employer and one or more employees of such employer are tax return preparers with respect to the same return or claim for refund, or where a partnership and one or more partners in such partnership are tax return preparers with respect to the same return or claim for refund, for purposes of paragraphs three and four of this subdivision, such employer or such partnership shall be deemed to be the sole tax return preparer. A person shall not be a "tax return preparer" merely because such person:

(A) furnishes typing, reproducing, or other mechanical assistance,

(B) prepares a return or claim for refund of the employer, or of an officer or employee of the employer, by whom he or she is regularly and continuously employed, or

(C) prepares as a fiduciary a return or claim for refund for any person.

(6) Person defined. For purposes of this subdivision, the term "person" includes an individual, corporation, including a dissolved corporation, or partnership.

(7) Return defined. For purposes of this subdivision, the term "return" shall mean any return required under this chapter.

(8) Claim for refund defined. For purposes of this subdivision, the term "claim for refund" shall mean a claim for refund of or credit against any tax imposed under this chapter, and shall include any claim for refund of any credit treated as an overpayment of tax under this chapter.

(9) Retention period defined. For purposes of this subdivision, the term "retention period" shall mean:

(A) in the case of a tax return, the period ending the later of three years after the due date of such return, without regard to extensions,

or three years after the date such return was presented to the taxpayer for such taxpayer's signature, and

(B) in the case of a claim for refund, the period ending three years after such claim for refund was presented to the taxpayer for such taxpayer's signature.

(10) Mandatory electronic filing by certain tax return preparers. (A)(i) If a tax return preparer prepared more than two hundred original returns during the calendar year beginning on January first, two thousand five, and if, in the calendar year beginning on January first, two thousand six, such tax return preparer prepares one or more authorized returns using tax software, then, for such calendar year two thousand six and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner of taxation and finance.

(ii) If a tax return preparer prepared more than one hundred original returns during any calendar year beginning on or after January first, two thousand six, and if, in any succeeding calendar year such tax return preparer prepares one or more authorized returns using tax software, then, for such succeeding calendar year and for each subsequent calendar year thereafter, all authorized returns prepared by such tax return preparer shall be filed electronically, in accordance with instructions prescribed by the commissioner of taxation and finance.

(B) For purposes of this paragraph: (i) "Electronic" means computer technology; provided, however, that the commissioner of taxation and finance may, in instructions, provide that use of barcode technology will also satisfy the mandatory electronic filing requirements of this section.

(ii) "Authorized return" means any return required under this article which the commissioner of taxation and finance has authorized to be filed electronically.

(iii) "Original return" means a return required under this article that is filed, without regard to extensions, during the calendar year for which that return is required to be filed.

(iv) "Tax software" means any computer software program intended for tax return preparation purposes.

§ 11-1759 Report of federal changes, corrections or disallowances. If the amount of a taxpayer's federal taxable income, total taxable amount or ordinary income portion of a lump sum distribution or includible gain of a trust reported on his federal income tax return for any taxable year, or the amount of any claim of right adjustment, is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or the amount an employer is required to deduct and withhold from wages for federal income tax withholding purposes is changed or corrected by such service or authority or if a taxpayer's claim for credit or refund of federal income tax is disallowed in whole or in part, the taxpayer or employer shall report such change or correction or disallowance within ninety days after the final determination of such change, correction, renegotiation, or disallowance, or as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code shall be treated as a final determination for purposes of this section. Any taxpayer filing an amended federal income

tax return and any employer filing an amended federal return of income tax withheld shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having a resident partner or having any income derived from New York sources, and a corporation with respect to which the taxable year of such change, correction, disallowance or amendment is a year with respect to which the election provided for in subsection (a) of section six hundred sixty of the tax law is in effect, and (ii) the term "federal income tax return" shall include the returns of income required under sections six thousand thirty-one and six thousand thirty-seven of the internal revenue code. In the case of such a corporation, such report shall also include any change or correction of the taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code. Reports made under this section by a partnership or corporation shall indicate the portion of the change in each item of income, gain, loss or deduction, and, in the case of a corporation, of each change in, or disallowance of a claim for credit or refund of such tax, allocable to each partner or shareholder and shall set forth such identifying information with respect to such partner or shareholder as may be prescribed by the commissioner.

§ 11-1761 Change of election. Any election expressly authorized by this chapter may be changed on such terms and conditions as the tax commission may prescribe by regulation.

§ 11-1762 Computation of tax where taxpayer restores substantial amount held under claim of right. (a) General. If:

(1) an item was included in city adjusted gross income for a prior taxable year, or years, because it appeared that the taxpayer had an unrestricted right to such item, and

(2) for the current taxable year the provisions of paragraph five of subsection (a) of section thirteen hundred forty-one of the internal revenue code apply to such item, then the tax imposed by this chapter for the taxable year shall be an amount equal to

(3) the tax for the taxable year computed without regard to this section, minus

(4) the decrease in tax under this chapter for the prior taxable year, or years, which would result solely from the exclusion of such item, or portion thereof, from city adjusted gross income for such prior taxable year, or years.

(b) Special rules. If the decrease in tax ascertained under paragraph four of subdivision (a) of this section exceeds the tax imposed by this chapter for the taxable year, such excess shall be considered a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

## SUBCHAPTER 4
## WITHHOLDING OF TAX

§ 11-1771 Requirement of withholding tax from wages. (a) General. (1) Every employer maintaining an office or transacting business within this city or state and making payment on and after January first, nineteen hundred seventy-seven of any wages taxable under this chapter, or under

section two of chapter eight hundred eighty-two of the laws of nineteen hundred seventy-five, as amended by chapter eight hundred eighty-six of the laws of nineteen hundred seventy-five, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this chapter or such section two resulting from the inclusion in the employee's city adjusted gross income of his or her wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by regulations of the tax commission, with due regard to the city withholding exemptions of the employee and the sum of any credits allowable against his or her tax. The section shall not apply to payments by the United States for service in the armed forces of the United States so long as the right to require deduction and withholding of tax from such payments is prohibited by the laws of the United States. Service in the armed forces of the United States shall have the same meaning as when used in a comparable context in the laws of the United States relating to withholding of city income taxes.

(2) The tax commission may provide, by regulations, for withholding:

(A) from remuneration for services performed by an employee for his or her employer which does not constitute wages, and

(B) from remuneration for services performed by an employee for his or her employer which does not constitute wages, and (B) from any other type of payment, with respect to which the tax commission finds that withholding would be appropriate under the provisions of this chapter, if the employer and the employee, or in the case of any other type of payment the person making and the person receiving the payment, agree to such withholding. Such agreement shall be made in such form and manner as the tax commission may by regulations provide. For purposes of this chapter, remuneration or other payments with respect to which such agreement is made shall be treated as if they were wages paid by an employer to an employee to the extent that such remuneration is paid or other payments are made during the period for which the agreement is in effect.

(3) The tax commission shall provide by regulation for an exemption from withholding for: (i) employees under eighteen years of age, (ii) employees under twenty-five years of age who are full-time students and (iii) employees over sixty-five years of age, provided such employees had no income tax liability in the prior year and can reasonably anticipate none in the current year.

(b) Extension of withholding to certain periodic payments and gambling winnings.

(1) For purposes of this chapter, any payment subject to withholding, within the meaning of paragraph two of this subdivision, shall be treated as if it were wages paid by an employer to an employee.

(2) Payments subject to withholding. For purposes of paragraph one of this subdivision, a payment subject to withholding means:

(A) Any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's city adjusted gross income.

(B) Any member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the code of the preceding

municipality or subdivision nineteen of section twenty-five hundred seventy-five of the education law.

(C) Any payment of an annuity to an individual to the extent includible in such individual's city adjusted gross income, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect.

(D) Any payment of winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars and such proceeds are payable pursuant to a prize claim made by an individual who was a resident of the city at the time of the selection of the prize winning lottery ticket.

(F) Any amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section one thousand two hundred ten-a of the public authorities law.

(G) Any amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of the code of the preceding municipality.

(3) Additional provisions applicable to this subdivision.

(A) Request for annuity withholding. A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments.

Such a request may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of termination. Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall prescribe.

(B) Withholding on lottery winnings upon change of residence. If a payee of lottery winnings subject to the provisions of subparagraph (D) of paragraph two of this subdivision changes status from resident to nonresident, withholding in accordance with such subparagraph shall constitute other security acceptable to the commissioner of taxation and finance within the meaning of paragraph four of subdivision (c) of section 11-1754 of this chapter, unless such payee elects, in such manner as the commissioner of taxation and finance shall prescribe, to apply the provisions of paragraph one of such subdivision (c) to the proceeds, in which case withholding under this subdivision shall no longer apply to such proceeds.

(C) Proceeds. For purposes of subparagraphs (D) and (E) of paragraph two of this subdivision, proceeds from a wager shall be determined by reducing the amount received by the amount of the wager.

(D) Taxes withheld at maximum rate. The tax withheld on any payment subject to withholding under subparagraph (D) or (E) of paragraph two of this subdivision shall be withheld at the highest rate of tax on city taxable income, without any allowance for deductions or exemptions, in effect under this chapter for the taxable year in which the payment is made.

(E) Determination of residence. For purposes of applying the provisions of subparagraphs (D) and (E) of paragraph two of this subdivision, any payor of proceeds shall determine the residence of the payee of such proceeds in accordance with regulations or instructions of the commissioner of taxation and finance or, in the absence of any such regulations or instructions, in accordance with the address of the payee required under the provisions of paragraph six of subsection (q) of section thirty-four hundred two of the internal revenue code.

(b) Extension of withholding to unemployment compensation benefits, annuity payments, and lottery winnings.

(1) For purposes of this chapter:

(A) any supplemental unemployment compensation benefit paid to an individual to the extent includible in such individual's city adjusted gross income,

(B) any payment of an annuity to an individual to the extent includible in such individual's city adjusted gross income, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and

(C) any periodic payment (but only where such payment is part of a series of payments extending over a period greater than one year), of lottery winnings by the division of the lottery, if at the time the payment is made a request that such lottery winnings be subject to withholding under this chapter is in effect, shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(D) any member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under subdivision (h) of section four hundred fourteen of the Internal Revenue Code.

(2) Request for withholding. A request that an annuity be subject to withholding under this chapter shall be made by the payee in writing to the person making the annuity payments, and a request that lottery winnings be subject to withholding under this chapter shall be made by the payee in writing to the division of the lottery, in the manner prescribed by the commissioner of taxation and finance. A request that an annuity be subject to withholding may, notwithstanding any provision of law to the contrary, be terminated by furnishing to the person making the payments a written statement of termination. A request that lottery winnings be subject to withholding under this chapter shall not be revocable while the payee is a nonresident, and shall constitute other security acceptable to the tax commission within the meaning of paragraph four of subdivision (c) of section 11-1754 of this chapter.

Such a request for withholding or statement of termination shall take effect in such manner as the commissioner of taxation and finance shall provide by regulation.

(c) Withholding exemptions. For purposes of this section:

(1) The number of city withholding exemptions which an employee receiving wages taxable under this chapter may claim shall not exceed the number of city exemptions allowed pursuant to the provisions of section 11-1716 of this chapter and such additional city withholding exemptions as may be prescribed by regulations or instructions of the commissioner of taxation and finance, taking into account the applicable standard deduction and such other factors as he or she finds appropriate.

(2) The amount of each city withholding exemption shall be the amount of the city exemption allowed pursuant to the provisions of section 11-1716 of this chapter.

(3) Withholding exemption certificate. An employee shall be required to file with his or her employer a withholding exemption certificate in accordance with regulations or instructions prescribed by the commissioner of taxation and finance.

§ 11-1772 Information statement for employee. Every employer required to deduct and withhold tax under this chapter from the wages of an

employee, or who would have been required so to deduct and withhold tax if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the tax commission showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the tax commission shall prescribe.

§ 11-1773 Credit for tax withheld. Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commission.

§ 11-1774 Employer's return and payment of withheld taxes. (a) General. Every employer required to deduct and withhold tax under this chapter shall file a withholding return and pay over to the tax commission or to a depository designated by the tax commission, the taxes so required to be deducted and withheld, as hereafter prescribed.

(1) If, after having made a payroll, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of seven hundred dollars or more of tax during a calendar quarter, such employer shall file a return and pay over the tax. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year which precedes the previous calendar year, the tax shall be paid over on or before the third business day following the date of making such a payroll. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of the tax law or a "health care provider" as defined in paragraph four of subsection (a) of section nine of the tax law, the tax shall be paid over on or before the fifth business day following the date of making such a payroll.

(2) If, at the close of any calendar quarter, an employer has been required to deduct and withhold, but has not paid over, a cumulative aggregate amount of less than seven hundred dollars of tax during such calendar quarter, such employer shall pay over the tax with the quarterly combined withholding, wage reporting and unemployment insurance return required to be filed for such quarter by paragraph four of this subdivision, on or before the last date prescribed by such paragraph for filing such return.

(3) If an employer makes more than one payroll per week, then such employer shall determine the applicability of the rules described in paragraphs one and two of this subdivision measured by the last payroll made within the week by such employer; provided, however, that in any week in which the end of a quarter occurs between the making of payrolls

by an employer, any tax required to be deducted and withheld in a payroll or payrolls made during such week prior to or on the end of the quarter shall be paid over. If an employer was required to remit a cumulative aggregate amount of less than fifteen thousand dollars in withholding tax during the calendar year preceding the previous calendar year, the tax shall be paid over on or before the fifth business day following the date of making the last payroll in such quarter. If an employer was required to remit a cumulative aggregate amount more than or equal to fifteen thousand dollars in withholding tax during the calendar year preceding the previous calendar year, the tax shall be paid over on or before the third business day following the date of making the last payroll in such quarter. In the case of an "educational organization" as defined in paragraph two of subsection (a) of section nine of the tax law or a "health care provider" as defined in paragraph four of subsection (a) of section nine of the tax law, the tax shall be paid over on or before the fifth business day following the date of making such a payroll. For purposes of this paragraph, the term "week" shall mean the period Sunday through Saturday.

(4)(A) All employers described in paragraph one of subdivision (a) of section 11-1771 of this subchapter, including those whose wages paid are not sufficient to require the withholding of tax from the wages of any of their employees, all employers required to provide the wage reporting information for the employees described in subdivision one of section one hundred seventy-one-a of the tax law, and all employers liable for unemployment insurance contributions or for payments in lieu of such contributions pursuant to article eighteen of the labor law, shall file a quarterly combined withholding, wage reporting and unemployment insurance return with the department of taxation and finance detailing the preceding calendar quarter's withholding tax transactions, such quarter's wage reporting information, such quarter's unemployment insurance contributions, and such other related information as the commissioner of taxation and finance or the commissioner of labor, as applicable, may prescribe. In addition, the return covering the last calendar quarter of each year shall also include withholding reconciliation information for such calendar year. Such returns shall be filed no later than the last day of the month following the last day of each calendar quarter; provided, however, that an employer may provide the wage reporting information covering the last calendar quarter of each year, and the withholding reconciliation information for such year no later than February twenty-eighth of the succeeding year.

(B) An employer shall, at the time prescribed by subparagraph (A) of this paragraph for filing each quarterly combined withholding, wage reporting and unemployment insurance return, pay over, in a single remittance, the unemployment insurance contributions and aggregate withholding taxes required to be paid over with such return.

Notwithstanding any provision of law to the contrary, an overpayment of unemployment insurance contributions or of aggregate withholding taxes made by an employer with the quarterly combined withholding, wage reporting and unemployment insurance return for a calendar quarter may be only credited by such employer against such employer's liability for unemployment insurance contributions or aggregate withholding taxes, respectively.

(5) The tax commission may, if it believes such action necessary for the protection of the revenues, require any employer to make such return and pay to it the tax deducted and withheld at any time, or from time to time.

(6) "Aggregate amount" as used in paragraphs one, two and three of this subdivision means the aggregate of the aggregate amounts of New York state personal income tax, city personal income tax on residents and city earnings tax on nonresidents authorized to be deducted and withheld.

(b) Deposit in trust for tax commission. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required in this section, the tax commission may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the tax commission, in a separate account, in trust for and payable to the tax commission, and to keep the amount of such tax in such account until payment over to the tax commission. Such notice shall remain in effect until a notice of cancellation is served by the tax commission.

§ 11-1775 Employer's liability for withheld taxes. Every employer required to deduct and withhold tax under this chapter is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the tax commission, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this chapter shall be held to be a special fund in trust for the tax commission. No employee shall have any right of action against his or her employer in respect to any moneys deducted and withheld from his or her wages and paid over to the tax commission in compliance or in intended compliance with this chapter.

§ 11-1776 Employer's failure to withhold. If an employer fails to deduct and withhold tax as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest, or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

§ 11-1777 Designation of third parties to perform acts required of employers. In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the tax commission, under regulations promulgated by it, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this chapter and as the tax commission may specify. Except as may be otherwise prescribed by the tax commission, all provisions of law, including penalties, applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law, including penalties, applicable in respect of employers.

§ 11-1778 Liability of third parties paying or providing for wages. (a) Direct payment by third party. If a lender, surety or other person, who is not an employer with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety or other person shall be liable for the amount of taxes, together with interest, required to be deducted and withheld from such wages by the employer.

(b) Funds supplied to employer by third parties. If a lender, surety or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this chapter to be deducted and withheld by such employer from such wages, such lender, surety or other person shall be liable for the amount of the taxes, together with interest, which are not paid over to the tax commission by such employer with respect to such wages. However, the liability of such lender, surety or other person shall be limited to an amount equal to twenty-five percent of the amount so supplied to or for the account of such employer for such purpose.

(c) Effect of payment. Any amounts paid to the tax commission pursuant to this section shall be credited against the liability of the employer.

## SUBCHAPTER 5
## PROCEDURE AND ADMINISTRATION

§ 11-1781 Notice of deficiency. (a) General. If upon examination of a taxpayer's return under this chapter the tax commission determines that there is a deficiency of income tax, it may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file an income tax return required under this chapter, the tax commission is authorized to estimate the taxpayer's city taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at his or her last known address in or out of this state. If a husband and wife are jointly liable for tax, a notice of deficiency may be a single joint notice, except that if the tax commission has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of this state. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. After ninety days from the mailing of a notice of deficiency, such notice shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice, except only for any such tax or other amounts as to which the taxpayer has within such ninety day period filed with the tax commission a petition under section 11-1789 of this subchapter. If the notice of deficiency is addressed to a person outside of the United States, such period shall be one hundred fifty days instead of ninety days.

(c) Restrictions on assessment and levy. No assessment of a deficiency in tax and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-1794 of this subchapter, until a notice of deficiency has been mailed to the taxpayer, nor until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the tax commission, until the decision of the tax commission has become final. For exception in the case of judicial review of the decision of the tax commission, see subdivision (c) of section 11-1790 of this subchapter.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return, including an overstatement of the credit for income

tax withheld at the source, or of the amount paid as estimated income tax, the tax commission shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1787 of this subchapter, limiting credits or refunds after petition to the tax commission, or subdivision (b) of section 11-1789 of this subchapter, authorizing the filing of a petition with the tax commission based on a notice of deficiency, nor shall such assessment or collection be prohibited by the provisions of subdivision (c) of this section.

(e) Exceptions where federal changes, corrections or disallowances are not reported. (1) If the taxpayer or employer fails to comply with section 11-1759 of this chapter, instead of the mode and time of assessment provided for in subdivision (b) of this section, the tax commission may assess a deficiency based upon such federal change, correction or disallowance by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal change, correction or disallowance or an amended return, where such return was required by section 11-1759 of this chapter, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1787 of this subchapter, limiting credits or refunds after petition to the tax commission, or subdivision (b) of section 11-1789 of this subchapter, authorizing the filing of a petition with the tax commission based on a notice of deficiency, nor shall such assessment or the collection thereof be prohibited by the provisions of subdivision (c) of this section.

(3) If a husband and wife are jointly liable for tax, a notice of additional tax due may be a single joint notice, except that if the tax commission has been notified by either spouse that separate residences have been established, then, in lieu of the joint notice, a duplicate original of the joint notice shall be mailed to each spouse at his or her last known address in or out of this state. If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of this state, unless the tax commission has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time, whether or not a notice of deficiency has been issued, have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the tax commission.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (i) the amount shown as the tax upon the taxpayer's return, whether the return was made or the tax computed by such taxpayer or by the tax commission, and less (ii) the amounts previously assessed, or collected without assessment, as a deficiency and plus (iii) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, credit, refund or other repayment,

whether or not erroneous, made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

§ 11-1782 Assessment. (a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return, including any amended return showing an increase of tax. In the case of a return properly filed without computation of tax, the tax computed by the tax commission shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in subdivision (b) of section 11-1781 of this subchapter if no petition to the tax commission is filed, or if a petition is filed, then upon the date when a decision of the tax commission establishing the amount of the deficiency becomes final. If an amended return or report filed pursuant to section 11-1759 of this chapter concedes the accuracy of a federal change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-1783 of this subchapter. If a notice of additional tax due, as prescribed in subdivision (e) of section 11-1781 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal change or correction or an amended return, where such return was required by section 11-1759 of this chapter, is filed accompanied by a statement showing wherein such federal determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter, including interest, additions to tax and assessable penalties, is not otherwise provided for, the tax commission may establish the same by regulations.

(c) Estimated income tax. No unpaid amount of estimated tax shall be assessed.

(d) Omission of income, item of tax preference, total taxable amount or ordinary income portion of a lump sum distribution on return. The tax may be assessed at any time within six years after the return was filed if: (1) an individual omits from his city adjusted gross income, the sum of his items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount of city adjusted gross income, the sum of the items of tax preference or the total taxable amount or ordinary income portion of a lump sum distribution stated in the return, or (2) an estate or trust omits from its city adjusted gross income, the sum of its items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of city adjusted gross income, or the sum of the items of tax preference, or the total taxable amount or ordinary income portion of a lump sum distribution, respectively. For purposes of this paragraph, city adjusted gross income

means New York adjusted gross income as determined under paragraph four of subsection (e) of section six hundred one of the tax law.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of the item of income, tax preference, the total taxable amount or ordinary income portion of a lump sum distribution.

(e) Cross reference. For assessment in case of jeopardy, see section 11-1794 of this subchapter.

§ 11-1783 Limitations on assessment. (a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed.

(b) Time return deemed filed.

(1) Early return. For purposes of this section a return of income tax, except withholding tax, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

(2) Return of withholding tax. For purposes of this section, if a return of withholding tax for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be deemed to be filed on April fifteenth of such succeeding calendar year.

(c) Exceptions.

(1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax, or

(C) the taxpayer or employer fails to comply with section 11-1759 of this chapter.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the tax commission and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of federal changes, corrections or disallowances. If the taxpayer or employer complies with section 11-1759 of this chapter, the assessment, if not deemed to have been made upon the filing of the report or amended return, may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax attributable to such federal change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Deficiency attributable to net operating loss carryback. If a deficiency is attributable to the application to the taxpayer of a net operating loss carryback, it may be assessed at any time that a deficiency for the taxable year of the loss may be assessed.

(5) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it

appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(6) Request for prompt assessment. If a return is required for a decedent or for a decedent's estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor, made after the return is filed, by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (d) of this section.

(7) Report on use of certain property. Under the circumstances described in paragraph two of subdivision (g) of section 11-1712 of this chapter, the tax may be assessed within three years after the filing of a return reporting that property has been used for purposes other than research and development to a greater extent than originally reported.

(8) Report concerning waste treatment facility, air pollution control facility or eligible business facility. Under the circumstances described in paragraph three of subdivision (h) of section 11-1712 of this chapter, the tax may be assessed within three years after filing of the return containing the information required by such paragraph, or, if a certificate of compliance in respect to an air pollution control facility shall be revoked, within three years after the tax commission shall receive notice of such revocation from the taxpayer or as required by section 19-0309 of the environmental conservation law, whichever notice is received earlier.

(9) Except as otherwise provided in paragraph three of this subdivision, or as otherwise provided in this section where a longer period of time may apply, if a taxpayer files an amended return, an assessment of tax, if not deemed to have been made upon the filing of the amended return, including recovery of a previously paid refund, attributable to a change or correction on the amended return from a prior return may be made at any time within one year after such amended return is filed.

(d) Omission of income, total taxable amount or ordinary income portion of a lump sum distribution on return. The tax may be assessed at any time within six years after the return was filed if:

(1) an individual omits from his city adjusted gross income the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount of city adjusted gross income or the total taxable amount or ordinary income portion of a lump sum distribution stated in the return, or

(2) an estate or trust omits from its city adjusted gross income, or the total taxable amount or ordinary income portion of a lump sum distribution an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of city adjusted gross income, or the total taxable amount or ordinary income portion of a lump sum distribution, respectively. For purposes of this paragraph, city adjusted gross income means New York adjusted gross income as determined under paragraph four of subsection (e) of section six hundred one of the tax law.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of the item of income, the total taxable amount or ordinary income portion of a lump sum distribution.

(e) Suspension of running of period of limitation. The running of the period of limitations on assessment or collection of tax or other amount, or of a transferee's liability, shall, after the mailing of a notice of deficiency, be suspended for the period during which the tax commission is prohibited under subdivision (c) of section 11-1781 of this subchapter from making the assessment or from collecting by levy.

§ 11-1784 Interest on underpayment. (a) General. If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the underpayment rate set by the commissioner of taxation and finance pursuant to section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(b) Exception as to estimated tax. This section shall not apply to any failure to pay estimated tax.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter, including any extension of time, and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) Suspension of interest on deficiencies. If a waiver of restrictions on assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the tax commission for payment of such deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(e) Tax reduced by carryback. If the amount of tax for any taxable year is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss arises. Such filing date shall be determined without regard to extensions of time to file.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as income tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within twenty-one calendar days from the date of the notice and demand therefor under subdivision (b) of section 11-1792 of this subchapter, ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment within specified period after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-1792 of this subchapter, and if such amount is paid within twenty-one calendar days, ten business days if the amount for which such

notice and demand is made equals or exceeds one hundred thousand dollars, after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(i) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected, at any time during the period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(j) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner of taxation and finance, shall bear interest at the underpayment rate set by such commissioner pursuant to section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(k) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 11-1785 Additions to tax and civil penalties. (a) (1) Failure to file tax return. (A) In case of failure to file a tax return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax hereunder shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amounts shown as tax on any return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the

tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including an assessment made pursuant to subdivision (a) of section 11-1782 of this subchapter, within twenty-one calendar days of the date of a notice and demand therefor, ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions. (A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of such paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(b) Deficiency due to negligence. (1) If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations established pursuant to such chapter, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under section 11-1784 of this subchapter with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) If any payment is shown on a return made by a payor with respect to dividends, patronage dividends and interest under subsection (a) of section six thousand forty-two, subsection (a) of section six thousand forty-four or subsection (a) of section six thousand forty-nine of the internal revenue code, respectively, and the payee fails to include any portion of such payment in city adjusted gross income, any portion of an underpayment attributable to such failure shall be treated, for purposes

of this subdivision, as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under this subdivision by reason of this paragraph, the amount of the penalty imposed by paragraph one of this subdivision shall be five percent of the portion of the underpayment which is attributable to the failure described in this paragraph.

(c) Failure by individual to pay estimated income tax. (1) Addition to the tax. Except as otherwise provided in this subdivision and subdivision (d) of this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under this chapter for the taxable year an amount determined by applying the underpayment rate established under section 11-1797 of this subchapter, or if no rate is set, at the rate of seven and one-half percent per annum, to the amount of the underpayment for the period of the underpayment. Such period shall run from the due date for the required installment to the earlier of the fifteenth day of the fourth month following the close of the taxable year or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of determining such date, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid. There shall be four required installments for each taxable year, due on April fifteenth, June fifteenth and September fifteenth of such taxable year and on January fifteenth of the following taxable year.

(2) Amount of underpayment. For purposes of paragraph one of this subdivision, the amount of the underpayment shall be the excess of the required installment over the amount, if any, of the installment paid on or before the due date for the installment.

(3) Required installment. (A) Except as provided in paragraph four of this subdivision, the amount of any required installment shall be twenty-five percent of the required annual payment.

(B) The required annual payment is the lesser of

(i) ninety percent of the tax shown on the return for the taxable year, or, if no return is filed, ninety percent of the tax for such year, or

(ii) one hundred percent of the tax shown on the return of the individual for the preceding taxable year. Provided, however, that the tax shown on such return for taxable years beginning in two thousand eight shall be calculated as if paragraph three of subdivision (f) of section 11-1715 of this chapter was in effect for taxable years beginning in two thousand eight. Provided, however, that the tax shown on such return for taxable years beginning in two thousand nine shall be calculated as if paragraph two of subdivision (g) of section 11-1715 of this chapter was in effect for taxable years beginning in two thousand nine.

Clause (ii) of this subparagraph shall not apply if the preceding taxable year was not a taxable year of twelve months or if the individual did not file a return for such preceding taxable year.

(C) Limitation on use of preceding year's tax.

(i) General. If the city adjusted gross income shown on the return of the individual for the preceding taxable year exceeds one hundred fifty thousand dollars, clause (ii) of subparagraph (B) of this paragraph shall be applied by substituting "one hundred ten percent" for "one hundred percent".

(ii) Separate returns. In the case of a husband and wife who file separate returns pursuant to subdivision (b) of section 11-1751 of this chapter for the taxable year for which the amount of the installment is

being determined, clause (i) of this subparagraph shall be applied by substituting "seventy-five thousand dollars" for "one hundred fifty thousand dollars".

(4) Annualized income installment. (A) In general. In the case of any required installment, if the individual establishes that the annualized income installment determined under subparagraph (B) of this paragraph is less than the amount determined under paragraph three of this subdivision, the annualized income installment shall be the required installment. Any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph three of this subdivision by the amount of such reduction, and by increasing successive required installments as necessary to effect full recapture.

(B) Determination of annualized income installment. In the case of any required installment, the annualized income installment is the excess, if any, of an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income for months in the taxable year ending before the due date for the installment, over the aggregate amount of any prior required installments for the taxable year. The applicable percentage of the tax shall be twenty-two and one-half percent in the case of the first installment, forty-five percent in the case of the second installment, sixty-seven and one-half percent in the case of the third installment and ninety percent in the case of the fourth installment, and shall be computed without regard to any increase in the rates applicable to the taxable year unless such increase was enacted at least thirty days prior to the due date of the installment.

(5) Definitions and special rules. (A) Definition of the term tax and application of credits against tax. For purposes of this subdivision and subdivision (d) of this section, the term "tax" means the tax imposed under this chapter minus the credits against tax allowed under this chapter, other than the credit under section 11-1773 of this chapter, relating to tax withheld on wages. The credit allowed under section 11-1773 of this chapter for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(B) Special rule where return filed on or before January thirty-first. If, on or before January thirty-first of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under paragraph one of this subdivision with respect to any underpayment of the fourth required installment for the taxable year.

(C) Special rules for farmers and fishermen. For purposes of this subdivision, if an individual is a farmer or fisherman for any taxable year there shall be only one required installment for the taxable year, due on January fifteenth of the following taxable year in an amount equal to the required annual payment determined under paragraph three of this subdivision by substituting sixty-six and two-thirds percent for ninety percent and without regard to subparagraph (C) of paragraph three of this subdivision. Subparagraph (B) of this paragraph shall be applied by substituting March first for January thirty-first and by treating the required installment under this subparagraph as the fourth required

installment. An individual is a farmer or fisherman for any taxable year if the individual's federal gross income from farming or fishing, including oyster farming, for the taxable year is at least two-thirds of the total federal gross income from all sources for the taxable year or if such individual's federal gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least two-thirds of the total federal gross income from all sources shown on such return.

(D) Fiscal years. In applying this subdivision to a taxable year beginning on any date other than January first, there shall be substituted, for the months specified in this subdivision, the months which correspond thereto.

(E) Short taxable year. This subdivision shall be applied to taxable years of less than twelve months in accordance with regulations prescribed by the tax commission.

(F) Joint estimated tax of husband and wife. A husband and wife may make the required annual payment determined under paragraph three of this subdivision as if they were one taxpayer, in which case the liability under paragraph one of this subdivision with respect to the estimated tax shall be joint and several. No such joint payment may be made if husband and wife are separated under a decree of divorce or separate maintenance, or if they have different taxable years. If a joint payment is made but husband and wife determine their taxes under this chapter separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(6) Trusts and certain estates. (A) General. This subdivision shall apply to any trust or estate except as provided in subparagraphs (B) and (C) of this paragraph.

(B) Exception for estates and certain trusts. This subdivision shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death to (i) the estate of such decedent or (ii) any trust all of which was treated, under subpart E of part I of subchapter J of chapter one of the internal revenue code, as owned by the decedent and to which the residue of the decedent's estate will pass under his will, or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration.

(C) Special rule for annualizations. In the case of any estate or trust, subparagraph (B) of paragraph four of this subdivision shall be applied by substituting "ending before the date one month before the due date for the installment" for "ending before the due date for the installment".

(D) In the case of a trust, the trustee may elect to treat any portion of a payment of estimated tax made by such trust for any taxable year of the trust as a payment made by a beneficiary of such trust. Any amount so treated shall be treated as paid or credited to the beneficiary on the last day of such taxable year, and for purposes of this subdivision, the amount so treated shall not be treated as a payment of estimated tax made by the trust, but shall be treated as a payment of estimated tax made by such beneficiary on the January fifteenth following the end of the trust's taxable year.

(E) An election under subparagraph (D) of this paragraph shall be made on or before the sixty-fifth day after the close of the taxable year and in such manner as the commissioner of taxation and finance may prescribe.

(F) Extension to last year of estate. In the case of a taxable year reasonably expected to be the last taxable year of an estate, any reference in subparagraph (D) of this paragraph to a trust shall be treated as including a reference to an estate, and the fiduciary of the estate shall be treated as the trustee.

(d) Exceptions to addition to tax for failure to pay estimated income tax.

(1) Where tax is small amount. No addition to tax shall be imposed under subdivision (c) of this section for any taxable year if the tax shown on the return for such taxable year, or, if no return is filed, the tax, reduced by the credit allowable under section 11-1773 of this chapter, is less than one hundred dollars.

(2) Where no tax liability for preceding taxable year. No addition to tax shall be imposed under subdivision (c) of this section for any taxable year if the preceding taxable year was a taxable year of twelve months, the individual did not have any liability for tax under this chapter for the preceding taxable year and throughout the preceding taxable year the individual was a resident of this city or a nonresident who had city adjusted gross income.

(3) Installment due on or after individual's death. No addition to tax shall be imposed under subdivision (c) of this section with respect to any installment due on or after the individual's death.

(4) Waiver in certain cases. (A) In general. No addition to tax shall be imposed under subdivision (c) of this section with respect to any underpayment to the extent the tax commission determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals. No addition to tax shall be imposed under subdivision (c) of this section with respect to any underpayment if the tax commission determines that in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year the taxpayer retired after having attained age sixty-two or became disabled, and that such underpayment was due to reasonable cause and not to willful neglect.

(e) Deficiency due to fraud. (1) If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under section 11-1784 of this subchapter with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The addition to tax under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (a) or (b) of this section.

(4) In the case of a joint return under section 11-1751 of this chapter, this subdivision shall not apply with respect to the tax of a spouse unless some part of the underpayment is due to the fraud of such spouse.

(f) Non-willful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment thereof, shall fail to make a return and pay a tax withheld by

him or her at the time required by or under the provisions of section 11-1774 of this chapter, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subdivision (a) of this section, and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The tax commission shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this chapter for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subdivision (b) or (e) of this section shall be imposed for any offense to which this subdivision applies. The tax commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subdivision.

(h) Failure to file certain information returns. (1) Except as otherwise provided in this paragraph, in case of each failure to file a statement of a payment to another person, required under authority of subdivision (d) of section 11-1758 of this chapter, relating to information at source, including the duplicate statement of tax withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the tax commission and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of fifty dollars for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed ten thousand dollars.

(2) If any partnership or S corporation required to file a return or report under subdivision (c) of section 11-1758 of this chapter or under section 11-1759 of this chapter for any taxable year fails to file such return or report at the time prescribed therefor, determined with regard to any extension of time for filing, or files a return or report which fails to show the information required under such subdivision (c) or section 11-1759 of this chapter, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the partnership or S corporation a penalty for each month, or fraction thereof, during which such failure continues, but not to exceed five months. The amount of such penalty for any month is the product of fifty dollars, multiplied by the number of partners in the partnership or shareholders in the S corporation during any part of the taxable year who were subject to tax under this chapter during any part of such taxable year.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable to penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the tax commission. The tax commission shall have the power, in its

discretion, to waive, reduce or compromise any penalty under this subdivision.

(j) Fraudulent statement or failure to furnish statement to employee. In addition to any criminal penalties provided by law, any person required under the provisions of section 11-1772 of this chapter to furnish a statement to an employee, who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 11-1772 of this chapter, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this chapter of fifty dollars.

(k) Failure to supply identifying numbers. If any person who is required by regulations prescribed under subdivision (b) of section 11-1758 of this chapter:

(1) to include his or her identifying number in any return, statement, or other document;

(2) to furnish his or her identifying number to another person; or

(3) to include in any return, statement or other document made with respect to another person the identifying number of such other person, fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, pay a penalty of five dollars for each such failure described in paragraph one of this subdivision and fifty dollars for each such failure described in paragraph two of this subdivision, and this paragraph, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed ten thousand dollars; except that for failure to include his or her own identification number in any return, statement or other document, such penalty shall not be imposed unless such person shall have failed to supply his or her identification number to the tax commission within thirty days after demand therefor.

(l) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to income tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-1781 of this subchapter, this subdivision shall not apply to:

(1) any addition to tax under subdivision (a) of this section except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c) of this section;

(3) any penalty under subdivision (h) of this section and any additional penalty under subdivision (i) of this section; and

(4) any penalties under subdivisions (j), (k), (q), (r), (s) and (t) of this section.

(m) Determination of deficiency. For purposes of subdivisions (b) and (e) of this section, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(n) Person defined. For purposes of subdivisions (g), (i), (o), (q) and (r) of this section, the term person includes an individual, corporation, partnership or limited liability company or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership, or a member, manager or employee

of a limited liability company, who as such officer, employee, manager or member is under a duty to perform the act in respect of which the violation occurs.

(o) Failure to make deposits of taxes. In case of failure by any person required by this chapter, or by regulations of the tax commission under this chapter, to deposit on the date prescribed therefor any amount of tax imposed by this chapter in a depository authorized pursuant to subdivision (a) of section 11-1792 of this subchapter to receive such deposits, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such person a penalty of five percent of the amount of the underpayment. For purposes of this subdivision the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof, deposited on or before the date prescribed therefor.

(p) Substantial understatement of liability. If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to ten percent of the amount of any underpayment attributable to such understatement. For purposes of this subdivision, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of ten percent of the tax required to be shown on the return for the taxable year, or two thousand dollars. For purposes of this subdivision, the term "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable year, over the amount of the tax imposed which is shown on the return reduced by any rebate, within the meaning of subdivision (g) of section 11-1781 of this subchapter. The amount of such understatement shall be reduced by that portion of the understatement which is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return. The tax commission may waive all or any part of the addition to tax provided by this subdivision on a showing by the taxpayer that there was reasonable cause for the understatement, or part thereof, and that the taxpayer acted in good faith.

(q) Frivolous tax returns. If any individual files what purports to be a return of any tax imposed by this chapter but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect; and such conduct is due to a position which is frivolous, or an intent, which appears on the purported return, to delay or impede the administration of this chapter, then such individual shall pay a penalty not exceeding five hundred dollars. This penalty shall be in addition to any other penalty provided by law.

(r) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. (1) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, counsel, or advise the preparation or presentation under, or in connection with any matter arising under this chapter of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information, whether or not such falsity of fraud is with the knowledge or consent of the person author-

ized or required to present such return, report, declaration, statement or other document shall pay a penalty not exceeding one thousand dollars.

(2) For purposes of paragraph one of this subdivision, the term "procures" includes ordering, or otherwise causing, a subordinate to do an act, and knowing of, and not attempting to prevent, participation by a subordinate in an act. The term "subordinate" means any other person, whether or not a director, officer, employee, or agent of the taxpayer involved, over whose activities the person has direction, supervision or control.

(3) For purposes of paragraph one of this subdivision, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(4) The penalty imposed by this subdivision shall be in addition to any other penalty provided by law.

(s) False information with respect to withholding. In addition to any criminal penalty provided by law, if any individual makes a statement under section 11-1771 of this chapter which results in a decrease in the amounts deducted and withheld under this chapter, and as of the time such statement was made, there was no reasonable basis for such statement, such individual shall pay a penalty of five hundred dollars for such statement. The tax commission shall waive the penalty imposed under this subdivision if the taxes imposed with respect to the individual under this chapter for the taxable year are equal to or less than the sum of the credits against such taxes allowed by this chapter, and the payments of estimated tax which are considered payments on account of such taxes.

(t) Failure of tax return preparer to conform to certain requirements. (1) Failure to sign return or claim for refund. Any individual who is a tax return preparer with respect to any return or claim for refund, who is required pursuant to paragraph one of subdivision (g) of section 11-1758 of this chapter to sign such return or claim for refund, and who fails to comply with such requirement with respect to such return or claim for refund, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(2) Failure to furnish identifying number. If any identifying number required to be included on any return or claim for refund pursuant to paragraph two of subdivision (g) of section 11-1758 of this chapter is not so included, the person who is the tax return preparer with respect to such return or claim for refund shall be subject to a penalty of fifty dollars with respect to such return or claim for refund unless it is shown that such failure is due to reasonable cause and not willful neglect. For purposes of this paragraph, where an employer and one or more employees of such employer are tax return preparers with respect to the same return or claim for refund or where a partnership and one or more partners in such partnership are tax return preparers with respect to the same return or claim for refund, such employer or such partnership shall be deemed to be the sole tax return preparer with respect to such return or claim for refund. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund

filed during any calendar year shall not exceed twenty-five thousand dollars.

(3) Failure to furnish copy to taxpayer. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph three of subdivision (g) of section 11-1758 of this chapter to furnish a copy of such return or claim for refund to the taxpayer, and who fails to comply with such provision with respect to such return or claim for refund shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to returns or claims for refund filed during any calendar year shall not exceed twenty-five thousand dollars.

(4) Failure to retain copy or list. Any person who is a tax return preparer with respect to any return or claim for refund, who is required under paragraph four of subdivision (g) of section 11-1758 of this chapter to: (i) retain a copy of such return or claim for refund or retain on a list the name and taxpayer identifying number of the taxpayer for whom such return or claim for refund was prepared and (ii) make such copy or list available for inspection upon request by the commissioner of taxation and finance, and who fails to comply with the retention requirement or who complies with the retention requirement but fails to comply with such request by the commissioner, shall be subject to a penalty of fifty dollars for each such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this paragraph on any person with respect to any calendar year shall not exceed twenty-five thousand dollars.

(5) Failure to electronically file. If a tax return preparer is required to file returns electronically pursuant to paragraph ten of subdivision (g) of section 11-1758 of this chapter, and such preparer fails to file one or more of such returns electronically, then such preparer shall be subject to a penalty of fifty dollars for each such failure to electronically file a return, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. For purposes of this paragraph, reasonable cause shall include, but not be limited to, a taxpayer's election not to electronically file his or her return.

§ 11-1786 Overpayment. (a) General. The state commissioner of taxation and finance, within the applicable period of limitations, may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by chapter nineteen of this title on the person who made the overpayment or any other tax imposed on such person pursuant to the authority of the tax law or any other law if such tax is administered by the state commissioner of taxation and finance, against any liability in respect of any tax imposed on such person by the tax law and, as provided in sections one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of the tax law, against past-due support, against a past-due legally enforceable debt, against a city of New York tax warrant judgment debt and against the amount of a default in repayment of a guaranteed student, state university or city university loan. The balance shall be refunded by the state comptroller out of the proceeds of the tax retained by him or her for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the

state commissioner of taxation and finance approved by the state comptroller. The state comptroller, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the state commissioner of taxation and finance.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 11-1771 of this chapter, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Overpayment by a deceased person. Notwithstanding section thirteen hundred ten of the surrogate's court procedure act, any overpayment by a decedent not in excess of one thousand dollars may be refunded to the decedent's surviving spouse unless the return for the decedent was filed by his or her executor or administrator.

(e) Credits against estimated tax. The commissioner of taxation and finance may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises, except upon request to the commissioner of taxation and finance on or before the last day prescribed for the filing of the return for the succeeding taxable year, determined with regard to any extension of time granted. If good cause is shown for reversing the credit, the commissioner of taxation and finance may, in his or her discretion, credit the overpayment against a liability or refund the overpayment without interest. Provided, the person who made the overpayment will not be relieved of liability for any penalty imposed for a consequent underpayment of estimated tax for the succeeding taxable year. The decision of the commissioner of taxation and finance to grant or deny the request is final and not subject to further administrative or judicial review.

(f) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(g) Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(h) Cross reference. For provision barring application of article fifty-two of the civil practice law and rules to any amount to be refunded or credited to a taxpayer, see section seven of the tax law.

§ 11-1787 Limitations on credit or refund. (a) General. Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the

claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (c) of section 11-1783 of this subchapter, extending the period for assessment of income tax, is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) Notice of federal change or correction. A claim for credit or refund of any overpayment of tax attributable to a federal change or correction required to be reported pursuant to section 11-1759 of this chapter shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner of taxation and finance. If the report or amended return required by section 11-1759 of this chapter is not filed within the ninety day period therein specified, no interest shall be payable on any claim for credit or refund of the overpayment attributable to the federal change or correction. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Overpayment attributable to net operating loss carryback. A claim for credit or refund of so much of an overpayment as is attributable to the application to the taxpayer of a net operating loss carryback shall be filed within three years from the time the return was due, including extensions thereof, for the taxable year of the loss, or within the period prescribed in subdivision (b) of this section in respect of such taxable year, or within the period prescribed in subdivision (c) of this section, where applicable, in respect of the taxable year to which the net operating loss is carried back, whichever expires the latest.

(e) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (f) of this section or subdivision (d) of section 11-1790 of this subchapter, after the expiration of the applicable period of limitation specified in this chapter, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(f) Effect of petition to tax commission. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-1781 of this subchapter and if the taxpayer files a timely petition with the tax commission under section 11-1789 of this subchapter, it may determine that the taxpayer has made an overpayment for such year, whether or not it also determines a deficiency for such a year. No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the tax commission which has become final; and

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the tax commission which has become final; and

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(g) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (f) of this section shall, when the decision of the tax commission has become final, be credited or refunded in accordance with subdivision (a) of section 11-1786 of this subchapter and shall not exceed the amount of tax which the tax commission determines as part of its decision was paid:

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim had been filed, whether or not filed, stating the grounds upon which the tax commission finds that there is an overpayment.

(h) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(i) Prepaid income tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him or her on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(j) Return and payment of withholding tax. Notwithstanding subdivision (h) of this section, for purposes of this section with respect to any withholding tax:

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(k) Running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability. (1) In the case of an individual taxpayer, the running of the periods specified in subdivisions (a), (b), and (c) of this section shall be suspended during any period of such individual's life that such individual is financially

disabled. For purposes of this subdivision, an individual taxpayer is an individual who is subject to the tax imposed under this chapter.

(2) For purposes of paragraph one of this subdivision, an individual taxpayer is financially disabled if such individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of that individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. An individual shall not be considered to have such impairment unless proof of the existence thereof is furnished in such form and manner as the commissioner of taxation and finance may require.

(3) An individual taxpayer shall not be treated as financially disabled during any period that such individual's spouse or any other person is authorized to act on behalf of such individual in financial matters.

(l) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (e) of section 11-1786 of this subchapter.

§ 11-1788 Interest on overpayment. (a) General. Notwithstanding the provisions of section sixteen of the state finance law, interest shall be allowed and paid as follows at the overpayment rate set by the commissioner of taxation and finance pursuant to section 11-1797 of this subchapter, or if no rate is set, at the rate of six percent per annum upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken;

(2) from the date of the overpayment to a date, to be determined by the commissioner of taxation and finance, preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(3) Late and amended returns and claims for credit or refund. Notwithstanding paragraph one or two of this subdivision, in the case of an overpayment claimed on a return of tax which is filed after the last date prescribed for filing such return, determined with regard to extensions, or claimed on an amended return of tax or claimed on a claim for credit or refund, no interest shall be allowed or paid for any day before the date on which such return or claim is filed.

(4) Interest on certain refunds. To the extent provided for in regulations promulgated by the commissioner of taxation and finance, if an item of income, gain, loss, deduction or credit is changed from the taxable year or period in which it is reported to the taxable year or period in which it belongs and the change results in an underpayment in a taxable year or period and an overpayment in some other taxable year or period, the provisions of paragraph three of this subdivision with respect to an overpayment shall not be applicable to the extent that the limitation in such paragraph on the right to interest would result in a taxpayer not being allowed interest for a length of time with respect to an overpayment while being required to pay interest on an equivalent amount of the related underpayment. However, this paragraph shall not be construed as limiting or mitigating the effect of any statute of limitations or any other provision of law relating to the authority of such commissioner to issue a notice of deficiency or to allow a credit or refund on an overpayment.

(5) Amounts of less than one dollar. No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax, payment of estimated tax, and credit for income tax withholding. The provisions of subdivisions (h) and (i) of section 11-1787 of this subchapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Income tax refund within forty-five days of claim for overpayment. If any overpayment of tax imposed by this chapter is credited or refunded within forty-five days after the last date prescribed, or permitted by extension of time, for filing the return of such tax on which such overpayment was claimed or within forty-five days after such return was filed, whichever is later, or within forty-five days after an amended return was filed claiming such overpayment or within forty-five days after a claim for credit or refund was filed on which such overpayment was claimed, within six months after a demand is filed pursuant to paragraph six of subsection (b) of section six hundred fifty-one of the tax law, no interest shall be allowed under this section on any such overpayment. For purposes of this subdivision, any amended return or claim for credit or refund filed before the last day prescribed, or permitted by extension of time, for the filing of the return of tax for such year shall be considered as filed on such last day.

(d) Refund of income tax caused by carryback. For purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the filing date for the taxable year in which such net operating loss arises. Such filing date shall be determined without regard to extensions of time to file. For purposes of subdivision (c) of this section any overpayment described herein shall be treated as an overpayment for the loss year and such subdivision shall be applied with respect to such overpayment by treating the return for the loss year as not filed before claim for such overpayment is filed. The term "loss year" means the taxable year in which such loss arises.

(e) No interest until return in processible form.

(1) For purposes of subdivisions (a) and (c) of this section, a return shall not be treated as filed until it is filed in processible form.

(2) For purposes of paragraph one of this subdivision, a return is in a processible form if:

(A) such return is filed on a permitted form, and

(B) such return contains:

(i) the taxpayer's name, address, and identifying number and the required signatures, and

(ii) sufficient required information, whether on the return or on required attachments, to permit the mathematical verification of tax liability shown on the return.

(f) Overpayment credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or defaulted guaranteed student, state university or city university loans. If interest is payable pursuant to this section on that portion of an overpayment of tax imposed by this chapter which is certified by the state commissioner of taxation and finance to the state comptroller as the amount to be credited against past-due support, or against a past-due legally enforceable debt, or a city of New York tax warrant judgment debt, or the amount of a default in repayment of a guaranteed student, state university or city university loan, as the case may be, pursuant to the provisions of sections one hundred seven-

ty-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f and one hundred seventy-one-l of the tax law, such portion of such an overpayment shall cease to bear interest on the date of such certification.

(g) Cross-reference. For provision with respect to interest after failure to file notice of federal change under section 11-1759 of this chapter, see subdivision (c) of section 11-1787 of this subchapter.

§ 11-1789 Petition to tax commission. (a) General. The form of a petition to the tax commission, and further proceedings before the tax commission in any case initiated by the filing of a petition, shall be governed by such rules as the tax commission shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by one or more members of the tax commission, or by a hearing officer designated by the tax commission to take evidence and report to the tax commission. The tax commissioners shall, acting as a body, jointly decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his or her last known address, and such notice shall set forth the tax commission's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-1781 of this subchapter, the taxpayer may file a petition with the tax commission for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (g) of section 11-1787 of this subchapter.

(c) Petition for refund. A taxpayer may file a petition with the tax commission for the amounts asserted in a claim for refund if:

(1) the taxpayer has filed a timely claim for refund with the tax commission,

(2) the taxpayer has not previously filed with the tax commission a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (f) of section 11-1787 of this subchapter, and

(3) either: (A) six months have expired since the claim was filed, or (B) the tax commission has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part.

No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such two year period it has been extended by written agreement between the taxpayer and the tax commission. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion of deficiency after filing petition.

(1) Petition for redetermination of deficiency. If a taxpayer files with the tax commission, a petition for redetermination of a deficiency, the tax commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there

should be assessed any addition to tax or penalty provided in section 11-1785 of this subchapter, if claim therefor is asserted at or before the hearing under rules of the tax commission.

(2) Petition for refund. If the taxpayer files with the tax commission a petition for credit or refund for a taxable year, the tax commission may:

(A) determine a deficiency for such year as to any amount of deficiency asserted at or before the hearing under rules of the tax commission, and within the period in which an assessment would be timely under section 11-1783 of this subchapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the tax commission.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the tax commission under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the tax commission under this section, no notice of deficiency under section 11-1781 of this subchapter may thereafter be issued by the tax commission for the same taxable year, except in case of fraud or with respect to a change or correction required to be reported under section 11-1759 of this chapter.

(e) Burden of proof. In any case before the tax commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the tax commission:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax;

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction required to be reported under section 11-1759 of this chapter, and of which change or correction the tax commission had no notice at the time it mailed the notice of deficiency; and

(4) whether any person is liable for a penalty under subdivision (q) or (r) of section 11-1785 of this subchapter.

(f) Evidence of related federal determination. Evidence of a federal determination relating to issues raised in a case before the tax commission under this section shall be admissible, under rules established by the tax commission.

(g) Jurisdiction over other years. The tax commission shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 11-1790 Review of tax commission decision. (a) General. A decision of the tax commission shall be subject to judicial review at the instance of any taxpayer effected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the state. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer. The review of a decision of the tax commission provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Assessment pending review; review bond. Irrespective of any restrictions on the assessment and collection of deficiencies, the tax commission may assess a deficiency after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the deficiency, has deposited with the tax commission the amount of the deficiency, or has filed with the tax commission a bond, which may be a jeopardy bond under subdivision (h) of section 11-1794 of this subchapter, in the amount of the portion of the deficiency, including interest and other amounts, in respect of which the application for review is made and all costs and charges which may accrue against him or her in the prosecution of the proceeding, including costs of all appeals, and with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the deficiency, including interest and other amounts, as finally determined and such costs and charges. If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the tax commission is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(d) Credit, refund or abatement after review. If the amount of a deficiency determined by the tax commission is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of tax commission decision. A decision of the tax commission shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the tax commission of a decision in accordance with the mandate of the court on review, provided, however, for the purpose of making an application for review, the decision of the tax commission shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

§ 11-1791 Mailing rules; holidays; miscellaneous. (a) Timely mailing. (1) If any return, claim, statement, notice, petition, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage

prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the tax commission.

(2)(A) Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the Internal Revenue Code and any reference in paragraph one of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the Internal Revenue Code by a designated delivery service. If the commissioner of taxation and finance finds that any delivery service designated by such secretary is inadequate for the needs of the state, such commissioner may withdraw such designation for purposes of this article. Such commissioner may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the Internal Revenue Code for purposes of this article, or may withdraw any such designation if such commissioner finds that a delivery service so designated is inadequate for the needs of the state. Any reference in paragraph one of this subdivision to the United States mail shall be treated as including a reference to any delivery service designated by such commissioner and any reference in paragraph one of this subdivision to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the Internal Revenue Code by a delivery service designated by the commissioner.

(B) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of taxation and finance pursuant to the same criteria used by the secretary for such designation pursuant to section seventy-five hundred two of the Internal Revenue Code, shall be included within the meaning of registered or certified mail as used in paragraph one of this subdivision. If such commissioner finds that any equivalent of registered or certified mail designated by such secretary or such commissioner is inadequate for the needs of the state, such commissioner may withdraw such designation for purposes of this article.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be the address given in the last return filed by such taxpayer, unless subsequent to the filing of such return the taxpayer shall have notified the tax commission of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

(d) Certificate; unfiled return. For purposes of this chapter, the certificate of the tax commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

(e) Attorney general; jurisdiction. The attorney general shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses arising under article thirty-seven of the tax law with respect to the tax imposed under this chapter.

§ 11-1792 Collection, levy and liens. (a) Collection procedures. The taxes imposed by this chapter shall be collected by the tax commission, and it may establish the mode or time for the collection of any amount due it under this chapter if not otherwise specified. The tax commission shall, upon request, give a receipt for any sum collected under this chapter. The tax commission may authorize banks or trust companies which are depositaries or financial agents of the state to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the tax commission may prescribe; and the tax commission shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the tax commission.

(b) Notice and demand for tax. The tax commission shall as soon as practicable give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the tax commission determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within twenty-one calendar days after notice and demand therefor is given to such person under subdivision (b) of this section, ten business days if the amount for which such notice and demand is made equals or exceeds one hundred thousand dollars, the commissioner of taxation and finance may within six years after the date of such assessment issue a warrant under such commissioner's official seal directed to the sheriff of any county of the state, or to any officer or employee of the department of taxation and finance, commanding him or her to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to such commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If such commissioner finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by such commissioner and upon failure or refusal to pay such tax or other amount such commissioner may issue a warrant without regard to the twenty-one day period, or ten-day period if applicable, provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of

this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a lien upon the title to and interest in real, personal and other property of the taxpayer. Such lien shall not apply to personal property unless such warrant is filed in the department of state.

(e) Judgment. When a warrant has been filed with the county clerk the tax commission shall, in the right of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the warrant in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for his or her services in executing the warrant, to be collected in the same manner. An officer or employee of the department of taxation and finance may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not a resident. Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident, and it appears to the tax commission that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident, the tax commission may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of taxation and finance, a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his or her last known address, subject to the rules for mailing provided in subdivision (a) of section 11-1781 of this subchapter. Such warrant shall command the officer or employee to proceed in Albany county, and he or she shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the tax commission may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure that a civil judgment of the supreme court of the state of New York could be collected or enforced. The tax commission may also, in its discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the tax commission shall deem proper and sufficient.

(h) Action by state for recovery of taxes. Action may be brought by the attorney general at the instance of the tax commission in the name of the city or both to recover the amount of any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced.

(i) Release of lien. The tax commission, if it finds that the interests of the city will not thereby be jeopardized, and upon such conditions as it may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

§ 11-1793 Transferees. (a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which the liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term transferee includes donee, heir, legatee, devisee and distributee.

(b) Exceptions.

(1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the tax commission in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) or the immediately preceding paragraph of this subdivision for the assessment of the liability, the tax commission and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-1787 of this subchapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-1787 of this subchapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-1787 of this subchapter shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if he or she had lived.

(d) Evidence. Notwithstanding the provisions of subdivision (e) of section 11-1797 of this subchapter the tax commission shall use its powers to make available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-1789 of this subchapter for rule as to burden of proof.

§ 11-1794 Jeopardy assessment. (a) Authority for making. If the tax commission believes that the assessment or collection of a deficiency

will be jeopardized by delay, it shall, notwithstanding the provisions of sections 11-1781 and 11-1796 of this subchapter, immediately assess such deficiency, together with all interest, penalties and additions to tax provided for by law, and notice and demand shall be made by the tax commission for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-1781 of this subchapter, then the tax commission shall mail a notice under such section within sixty days after the making of the assessment.

(c) Amount assessable before decision of tax commission. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has theretofore filed a petition with the tax commission. The tax commission may, at any time before rendering its decision, abate such assessment, or any unpaid portion thereof, to the extent that it believes the assessment to be excessive in amount. The tax commission may in its decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of tax commission. If the jeopardy assessment is made after the decision of the tax commission is rendered, such assessment may be made only in respect of the deficiency determined by the tax commission in its decision.

(e) Expiration of right to assess. A jeopardy assessment may not be made after the decision of the tax commission has become final or after the taxpayer has made an application for review of the decision of the tax commission.

(f) Collection of unpaid amounts. When a petition has been filed with the tax commission and when the amount which should have been assessed has been determined by a decision of the tax commission which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the tax commission, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-1786 of this subchapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the tax commission.

(g) Abatement if jeopardy does not exist. The tax commission may abate the jeopardy assessment if it finds that jeopardy does not exist. Such abatement may not be made after a decision of the tax commission in respect of the deficiency has been rendered or, if no petition is filed with the tax commission, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the day on which such jeopardy assessment is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any jeopardy assessment may be stayed by filing with the tax commission, within such time as may be fixed by regulation, a bond in an

amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount, together with interest thereon, the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-1781 of this subchapter is mailed to the taxpayer in a lesser amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to tax commission. If the bond is given before the taxpayer has filed his or her petition under section 11-1789 of this subchapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment, collection of which is stayed by the bond, as is not abated by a decision of the tax commission which has become final. If the tax commission determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the tax commission is rendered.

(j) Stay of sale of seized property pending tax commission decision. Where a jeopardy assessment is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-1789 of this subchapter for filing a petition with the tax commission, and

(2) if a petition is filed with the tax commission, whether before or after the making of such jeopardy assessment, prior to the expiration of the period during which the assessment of the deficiency would be prohibited if subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the tax commission determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-1784 of this subchapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the tax commission finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the city personal income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the tax commission shall

declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the tax commission made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the tax commission, as provided in subdivision (1) of this section, the tax commission may reopen such taxable period each time the taxpayer is found by the tax commission to have received income, within the current taxable year, since the termination of such period. A taxable period so terminated by the tax commission may be reopened by the taxpayer if he or she files with the tax commission a true and accurate return of taxable income and credits allowed under this chapter for such taxable period, together with such other information as the tax commission may by regulations prescribe.

(n) Furnishing of bond where taxable year is closed by the tax commission. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the tax commission, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any city personal income taxes for prior years.

§ 11-1795 Criminal penalties; cross-reference. For criminal penalties, see article thirty-seven of the tax law.

§ 11-1796 Income taxes of members of armed forces and victims of certain terrorist attacks. (a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States, or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized inside or outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization inside or outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter, in respect of the city personal income tax liability, including any interest, penalty, or addition to the tax, of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of income tax, except withholding tax;

(B) payment of any income tax, except withholding tax, or any installment thereof or of any other liability in respect thereof;

(C) filing a petition with the tax commission for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the tax commission;

(D) allowance of a credit or refund of city personal income tax;

(E) filing a claim for credit or refund of city personal income tax;

(F) assessment of city personal income tax;

(G) giving or making any notice or demand for the payment of any city personal income tax, or with respect to any liability to the city in respect of such income tax;

(H) collection, by the tax commission, by levy or otherwise of the amount of any liability in respect of such income tax;

(I) bringing suit by the city, the state, or any officer, on their behalf, in respect of any liability in respect of such income tax; and

(J) any other act required or permitted under this chapter or specified in regulations prescribed under this section by the tax commission.

(2) The amount of any credit or refund.

(b) Special rule for overpayments. (1) Subdivision (a) of this section shall not apply for purposes of determining the amount of interest on any overpayment of tax.

(2) If an individual is entitled to the benefits of subdivision (a) of this section with respect to any return, amended return, or claim for credit or refund, and such return, amended return or claim is timely filed, determined after the application of such subdivision, paragraph three of subdivision (a) and subdivision (c) of section 11-1788 of this subchapter of this title shall not apply.

(c) Action taken before ascertainment of right to benefits. The assessment or collection of the tax imposed by this chapter or of any liability in respect of such tax, or any action or proceeding by or on behalf of the city in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subdivision (a) of this section.

(d) Members of armed forces dying in action. In the case of any person who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

(e) Treatment of individuals performing Desert Shield services. (1) Any individual who performed Desert Shield services shall be entitled to the benefits of subdivisions (a) and (b) of this section in the same manner as if such services were services referred to in subdivision (a) of this section.

(2) For purposes of this subdivision, the term "Desert Shield services" means any services in the armed forces of the United States or in support of such armed forces if

(A) such services are performed in the area designated by the president of the United States as the "Persian Gulf Desert Shield area", and

(B) such services are performed during the period beginning on August second, nineteen hundred ninety, and ending on the date on which any portion of the area referred to in subparagraph (A) of this paragraph is designated by the president as a combat zone pursuant to section one hundred twelve of the internal revenue code.

(f) Relief for personnel under hostile fire. For purposes of this section, members of the armed forces of the United States who perform military service in an area outside an area designated by the president of the United States by executive order as a "combat zone", which service is in direct support of military operations in such zone and is performed under conditions which qualify such members for hostile fire pay, as authorized under subdivision (a) of section nine of the federal uniformed services pay act of nineteen hundred sixty-three, shall, during the period of such qualifying service, be deemed to have served in such combat zone.

(g) Application to spouse. The provisions of subdivisions (a), (b), (c), (e) and (f) of this section shall apply to the spouse of any individual entitled to the benefits of subdivision (a) of this section; provided, however, that such subdivisions shall not apply for any spouse for any taxable year beginning more than two years after the date designated under section one hundred twelve of the internal revenue code as the date of termination of combatant activities in a combat zone.

(h) Individuals dying as a result of certain attacks. (1) General. In the case of a specified terrorist victim, any tax imposed by this chapter shall not apply: (A) with respect to the taxable year in which falls the date of death; and (B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury referred to in paragraph three of this subdivision were incurred.

(2) Taxation of certain benefits. Paragraph one of this subdivision shall not apply to the amount of any tax imposed by this chapter which would be computed by only taking into account the items of income, gain, or other amounts determined by the United States secretary of the treasury to be taxable pursuant to paragraph three of subdivision (d) of section six hundred ninety-two of the internal revenue code.

(3) Specified terrorist victim. For purposes of this subdivision, the term "specified terrorist victim" means any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on September eleventh, two thousand one, provided, however, such term shall not include any individual identified by the attorney general of the United States to have been a participant or conspirator in any such attack or a representative of such an individual.

§ 11-1797 General powers of tax commission. (a) General. The tax commission shall administer and enforce the tax imposed by this chapter and it is authorized to make such rules and regulations, and to require such facts and information to be reported, as it may deem necessary to enforce the provisions of this chapter.

(b) Examination of books and witnesses. (1) The tax commission for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of

any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

(2) The tax commission may take any action under paragraph one of this subdivision to inquire into the commission of any offense connected with the administration or enforcement of this chapter, provided, however, that notwithstanding the provisions of section 11-1774 of this chapter no such action shall be taken after a referral by the department or the tax commission to the attorney general, a district attorney or any other prosecutorial agency is in effect.

(c) Abatement authority. The tax commission, of its own motion, may abate any small unpaid balance of an assessment of city personal income tax, or any liability in respect thereof, if the tax commission determines under uniform rules prescribed by it that the administration and collection costs involved would not warrant collection of the amount due. It may also abate, of its own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expiration of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the tax commission that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the tax commission at any time, without regard to any period of limitations, shall have the power, upon making a record of its reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded and to issue therefor its certificate to the comptroller.

(e) Secrecy requirement and penalties for violation. (1) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the tax commission, any tax commissioner, any officer or employee of the department of taxation and finance, any person engaged or retained by such department on an independent contract basis, any depositary to which any return may be delivered as provided in subdivision (h) or (i) of this section, any officer or employee of such depositary, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the tax commission in an action or proceeding under the provisions of this chapter, the tax law or in any other action or proceeding involving the collection of a tax due under this chapter or such tax law to which the city, state or the tax commission is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The

tax commission may, nevertheless, publish a copy or a summary of any decision rendered after the hearing required under section 11-1789 of this subchapter.

(3) Nothing in this section shall be construed to prohibit the delivery by the state commissioner of taxation and finance to the county clerk of a county within the city of New York of a mailing list of individuals to whom income tax forms are mailed by the state commissioner of taxation and finance for the sole purpose of compiling a list of prospective jurors as provided in article sixteen of the judiciary law. Provided, however, such delivery shall only be made pursuant to an order of the chief administrator of the courts, appointed pursuant to section two hundred ten of such law. No such order may be issued unless such chief administrator is satisfied that such mailing list is needed to compile a proper list of prospective jurors for the county for which such order is sought and that, in view of the responsibilities imposed by the various laws of the state on the department of taxation and finance, it is reasonable to require the state commissioner of taxation and finance to furnish such list. Such order shall provide that such list shall be used for the sole purpose of compiling a list of prospective jurors and that such county clerk shall take all necessary steps to insure that the list is kept confidential and that there is no unauthorized use or disclosure of such list. Furthermore, nothing in this section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state or city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance, the corporation counsel or the attorney general or has been instituted, or the inspection of the reports or returns required under this chapter by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a taxpayer under this chapter, or the furnishing to the state department of social services of the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against past-due support pursuant to section one hundred seventy-one-c of the tax law and of the name and social security number of the taxpayer who made such overpayment or the furnishing to the New York state higher education services corporation of the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of a guaranteed student loan pursuant to section one hundred seventy-one-d of the tax law and of the name and social security number of the taxpayer who made such overpayment or the furnishing to the state university of New York or the city university of New York or the attorney general on behalf of such state or city university the amount of an overpayment of tax and interest thereon certified to the comptroller to be credited against the amount of a default in repayment of a state university loan or city university loan pursuant to section one hundred seventy-one-e of the tax law and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of the tax law, of the amount of an overpayment and interest ther-

eon certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and of the name and social security number of the taxpayer who made such overpayment, or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-1 of the tax law, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt and of the name and social security number of the taxpayer who made such overpayment. Reports and returns shall be preserved for three years and thereafter until the state commissioner of taxation and finance orders them to be destroyed.

(3-a) Notwithstanding the provisions of paragraph one of this subdivision, the state commissioner of taxation and finance or the commissioner of finance may disclose to a taxpayer or a taxpayer's related member, as defined in subdivision (t) of section 11-1712 of this chapter, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the state commissioner of taxation and finance under this chapter or the New York state tax law or the commissioner of finance under this title.

(4) (A) Any officer or employee of the state, who willfully violates the provisions of this subdivision shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(B) Cross-reference: For criminal penalties, see article thirty-seven of the tax law.

(f) Cooperation with the United States and other states. Notwithstanding the provisions of subdivision (e) of this section, the tax commission may permit the secretary of the treasury of the United States or his or her delegates, or the proper tax officer of any state imposing an income tax upon the incomes of individuals, or the authorized representative of either such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this chapter and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the commissioner of internal revenue or his or her authorized representative such returns filed under this chapter and other tax information, as he or she may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury of the United States or his or her delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or his or her delegates. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and

finance may testify in such actions or proceedings in respect to such returns or other information.

(g) Cooperation with the cities of the state of New York. Notwithstanding the provisions of subdivision (e) of this section, the tax commission may permit the proper city officer of any city of the state of New York imposing a personal income tax upon the incomes of residents, or an unincorporated business income tax, or an earnings tax on nonresidents, or the authorized representative of any such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this chapter and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or the legal representative of such city such returns filed under this chapter and other tax information, as he or she may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his or her delegate, provided the local law of such city grants substantially similar powers to such city officer or his or her delegate. Where the commissioner of taxation and finance has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

(h) Withholding returns. Notwithstanding the provisions of subdivision (e) of this section the tax commission in its discretion, when making deposits, pursuant to section 11-1798 of this subchapter, of taxes withheld by employers, may deliver to the depositary the withholding returns filed by such employers as provided in section 11-1774 of this chapter, for the purpose of insuring that all money so deposited shall be correctly credited to taxpayers' accounts.

(i) Filing returns and making payments to depository banks. Notwithstanding the provisions of subdivision (e) of this section, the tax commission, in its discretion, may require or permit any or all individuals, estates or trusts liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the tax commission and to file reports and returns with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section 11-1798 of this subchapter.

(j) (1) Authority to set interest rates. The commissioner of taxation and finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this subchapter, but if no such rates of interest are set, such overpayment rate shall be deemed to be set at six percent per annum and the underpayment rate shall be deemed to be set at seven and one-half per annum.

Such rates shall be the rates prescribed by paragraphs two and four of this subdivision, but shall not be less than seven and one-half percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(1) Authority to set interest rates. The commissioner of taxation and finance shall set the overpayment and underpayment rates of interest to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this subchapter, but if no such rates of interest are set, such rates shall be deemed to be set at six percent per annum. Such rates shall be the rates prescribed by paragraphs two and four of this subdivision, but the underpayment rate shall not be less than six percent per annum. Any such rates set by such commissioner shall apply to taxes, or any portion thereof, which remain or become due or overpaid on or after the date on which such rates become effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period during which such rates are in effect.

(2) Rates of interest. (A) Overpayment rate. The overpayment rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) two percentage points.

(B) Underpayment rate. The underpayment rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five and one-half percentage points.

(3) Federal short-term rate. For the purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clauses (ii) and (iii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for individual estimated tax. In determining the addition to tax under subdivision (c) of section 11-1785 of this subchapter for failure to pay estimated tax for any taxable year, the federal short-term rate which applies during the third month following the taxable year shall also apply during the first fifteen days of the fourth month following such taxable year.

(iii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Notwithstanding the provisions of paragraph two of this subdivision to the contrary, in the case of interest payable by an employer with respect to income taxes required to be withheld and paid over by him or her pursuant to the provisions of subchapter four of this chapter

and with respect to interest payable to an employer pursuant to subdivision (c) of section 11-1786 of this subchapter, the rates of interest prescribed by this section shall be the overpayment and underpayment rates of interest prescribed in paragraph two of subsection (e) of section one thousand ninety-six of the tax law.

(5) In computing the amount of any interest required to be paid under this article by the commissioner of taxation and finance or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily. The provisions of this paragraph shall not apply for purposes of computing the amount of any addition to tax for failure to pay estimated tax under subdivision (c) of section 11-1785 of this subchapter.

(6) Publication of interest rates. The commissioner of taxation and finance shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the interest rates to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rates apply. The setting and publication of such interest rates shall not be included within paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act relating to the definition of a rule.

(7) Cross-reference. For provisions relating to the power of the commissioner of taxation and finance to abate small amounts of interest, see subdivision (c) of this section.

(k) Disclosure of collection activities with respect to joint return. Notwithstanding the provisions of subdivision (e) of this section, if any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the commissioner of taxation and finance shall disclose in writing to the individual making the request whether such commissioner has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected.

The opening paragraph of this subdivision shall not apply to any deficiency which may not be collected by reason of expiration of time within which to issue a warrant under subdivision (c) of section 11-1792 of this subchapter or within which to collect such tax by execution and levy or by court proceeding.

(l) Disclosure of certain information where more than one person is subject to penalty. If the commissioner of taxation and finance determines that a person is liable for a penalty under subdivision (g) of section 11-1785 of this subchapter with respect to any failure, upon request in writing of such person, such commissioner shall disclose in writing to such person (1) the name of any other person whom such commissioner has determined to be liable for such penalty with respect to such failure, and (2) whether such commissioner has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

(m) (1) Notwithstanding the provisions of subdivision (e) of this section, upon written request from the chairperson of the committee on ways and means of the United States House of Representatives, the chairperson of the committee on finance of the United States Senate, or the chairperson of the joint committee on taxation of the United States Congress, the commissioner of taxation and finance shall furnish such committee with any current or prior year returns specified in such request that were filed under this article by the president of the

United States, vice-president of the United States, member of the United States Congress representing New York state, or any person who served in or was employed by the executive branch of the government of the United States on the executive staff of the president, in the executive office of the president, or in an acting or confirmed capacity in a position subject to confirmation by the United States senate; or, in New York state: a statewide elected official, as defined in paragraph (a) of subdivision one of section seventy-three-a of the public officers law; a state officer or employee, as defined in subparagraph (i) of paragraph (c) of subdivision one of such section seventy-three-a; a political party chairperson, as defined in paragraph (h) of subdivision one of such section seventy-three-a; a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a person appointed, pursuant to law, to serve due to vacancy or otherwise in the position of a local elected official, as defined in subdivisions one and two of section eight hundred ten of the general municipal law; a member of the state legislature; or a judge or justice of the unified court system; provided however that, prior to furnishing any return, the commissioner shall redact any copy of a federal return, or portion thereof, attached to, or any information on a federal return that is reflected on, such return, and any social security numbers, account numbers and residential address information.

(2) No returns shall be furnished pursuant to this subdivision unless the chairperson of the requesting committee certifies in writing that such returns have been requested related to, and in furtherance of, a legitimate task of the Congress, that the requesting committee has made a written request to the United States secretary of the treasury for related federal reports or returns or report or return information, pursuant to 26 U.S.C. Section 6103(f), and that if such requested returns are inspected by and/or submitted to another committee, to the United States House of Representatives, or to the United States Senate, then such inspection and/or submission shall occur in a manner consistent with federal law as informed by the requirements and procedures established in 26 U.S.C. Section 6103(f).

§ 11-1798 Deposit and disposition of revenues. All revenue collected by the state commissioner of taxation and finance from the taxes imposed pursuant to this chapter or chapter nineteen of this title shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for the city. Such deposits shall be kept in trust and separate and apart from all other moneys in the possession of the comptroller. The state comptroller shall require adequate security from all such depositories of such revenue collected by the state commissioner of taxation and finance. The state comptroller shall retain in his or her hands such amounts as the commissioner of taxation and finance may determine to be necessary for refunds in respect to the taxes imposed by this chapter and such chapter nineteen and for reasonable costs of the state commissioner of taxation and finance in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under this chapter and such chapter nineteen and except further that he or she shall pay to a non-obligated spouse that amount of overpayment of tax imposed pursuant to the authority of article thirty of the tax law or former article two-E of the general city law and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-

one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax law and which is certified to him or her by the commissioner of taxation and finance as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of the tax law, and he or she shall deduct a like amount which he shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, the higher education services corporation, or to the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment and, with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of the tax law and paid to the city of New York, the comptroller shall collect a like amount from the city of New York. The state comptroller, after reserving such refund fund and such costs shall, on or before the fifteenth day of each month, pay to the chief fiscal officer of the city the balance of such taxes collected, to be paid into the treasury of the city to the credit of the general fund except that he or she shall pay to the state department of social services that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him or her by the state commissioner of taxation and finance as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of the tax law and except that he or she shall pay to the New York state higher education services corporation that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him or her by the state commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of guaranteed student loans pursuant to subdivision five of section one hundred seventy-one-d of the tax law and except that he or she shall pay to the state university of New York or the city university of New York, respectively, that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him or her by the state commissioner of taxation and finance as the amount to be credited against the amount of defaults in repayment of state university or city university loans pursuant to subdivision six of section one hundred seventy-one-e of the tax law, and except further that, notwithstanding any other provision of law, he or she shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayments of the taxes imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him or her by the state commissioner of taxation and finance as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of the tax law, provided, however, he or she shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of the tax law, and except further that he or she shall pay to the city of New York that amount of overpayments of tax imposed pursuant to this chapter or chapter nineteen of this title and the interest on such amount which is certified to him or her by the

state commissioner of taxation and finance as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of the tax law. The amount deducted for administering, collecting and distributing such taxes during such monthly period shall be paid by the state comptroller into the general fund of the state treasury to the credit of the state purposes fund therein. The first payment to such chief fiscal officer shall be made on or before March fifteenth, nineteen hundred seventy-six, which payment shall represent the balance of revenue after provision for refund and such reasonable costs, with respect to taxes collected from January first, nineteen hundred seventy-six through February twenty-ninth, nineteen hundred seventy-six. Subsequent payments shall be made on or before April fifteenth, nineteen hundred seventy-six and on or before the fifteenth day of each succeeding month thereafter, and shall represent the balance of revenue with respect to taxes collected the preceding calendar month. The amounts so payable shall be certified to the state comptroller by the state commissioner of taxation and finance or his or her delegate, either of whom shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to such chief fiscal officer is more or less than the amount then due such city, the amount of overpayment or underpayment shall be certified to the state comptroller by the state commissioner of taxation and finance or his or her delegate, either of whom shall not be held liable for any inaccuracy in such certificate. The amount of overpayment or underpayment shall be so certified to the state comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments by the state comptroller to such chief fiscal officer shall be adjusted by subtracting the amount of any such overpayment from, or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the state comptroller and the state commissioner of taxation and finance shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

§ 11-1800 Enforcement with other taxes. (a) If there is assessed a tax under this chapter and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two of the tax law or under chapter nineteen of this title and if the tax commission takes action under such article twenty-two or under such chapter nineteen with respect to the enforcement and collection of the tax or taxes assessed under such articles or chapter, the tax commission shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of this chapter.

(b) Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of the tax law and this city income tax.

(c) Whenever the tax commission takes any action with respect to a deficiency of income tax under article twenty-two of the tax law or under chapter nineteen of this title, other than the action set forth in subdivision (a) of this section, it may in its discretion accompany such action with a similar action under such city income tax.

§ 11-1801 Administration, collection and review. (a) Except as otherwise provided in this chapter, any tax imposed by this chapter shall be administered and collected by the tax commission in the same manner as the tax imposed by article twenty-two of the tax law is administered and collected by such commission. Whenever there is joint collection of

state and city personal income taxes, it shall be deemed that such collections shall represent proportionately the applicable state and city personal income taxes in determining the amount to be remitted to the city.

(b) The tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed by this chapter to make payments on account of estimated tax and payment of any tax, penalty or interest to such banks, banking houses or trust companies designated by the tax commission and to file returns with such banks, banking houses or trust companies, as agent of the tax commission, in lieu of paying a tax imposed by this chapter directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies which are designated by the comptroller as depositories of the state.

(c) Notwithstanding any other provisions of this chapter, the tax commission may require:

(1) the filing of any or all of the following:

(A) a combined return which, in addition to the return provided for in section 11-1751 of this chapter, may also include any or both of the returns required to be filed by a resident individual of New York state pursuant to the provisions of section six hundred fifty-one of the tax law and which may be required to be filed by such individual pursuant to chapter nineteen of this title and

(B) a combined employer's return which, in addition to the employer's return provided for by this chapter, may also include any or both of the employer's returns required to be filed by the same employer pursuant to the provisions of section six hundred seventy-four of such law and required to be filed by such employer pursuant to such chapter nineteen of this title and

(2) where a combined return or employer's return is required, and with respect to the payment of estimated tax, the tax commission may also require the payment to it of a single amount which shall equal the total of the amounts which would have been required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of article twenty-two of the tax law, and the provisions of this chapter as if no combined return or employer's return were required.

§ 11-1802 Construction. This chapter shall be construed and enforced in conformity with article thirty of the tax law, as added to such law by chapter eight hundred eighty-one of the laws of nineteen hundred seventy-five, pursuant to which article it is enacted.

## CHAPTER 19
## EARNINGS TAX ON NONRESIDENTS
### SUBCHAPTER 1
### GENERAL

§ 11-1901 Meaning of terms. As used in this chapter, the following terms shall mean and include:

(a) "Commissioner" means the commissioner of finance of the city except that with respect to taxes imposed for any taxable year beginning on or after January first, nineteen hundred seventy-six, such term shall mean state tax commission.

(b) "Payroll period" and "employer" mean the same as payroll period and employer as defined in subsections (b) and (d) of section thirty-four hundred one of the internal revenue code, and "employee" shall also

include all those included as employees in subsection (c) of such section of such code.

(c) "Commissioner of finance" means the commissioner of finance of the city.

(d) "This state" means the state of New York.

(e) "Wages" means wages as defined in subsection (a) of section thirty-four hundred one of the internal revenue code, except that (1) wages shall not include payments for active service as a member of the armed forces of the United States and shall not include, in the case of a nonresident individual or partner of a partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is such individual's distributive or pro rata share for federal income tax purposes or which such individual is required to take into account separately for federal income tax purposes, and (2) wages shall include (i) the amount of member or employee contributions to a retirement system or pension fund picked up by the employer pursuant to subdivision f of section five hundred seventeen or subdivision d of section six hundred thirteen of the retirement and social security law or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code of the preceding municipality or subdivision nineteen of section twenty-five hundred seventy-five of the education law, (ii) the amount deducted or deferred from an employee's salary under a flexible benefits program established pursuant to section twenty-three of the general municipal law or section twelve hundred ten-a of the public authorities law, (iii) the amount by which an employee's salary is reduced pursuant to the provisions of subdivision b of section 12-126.1 and subdivision b of section 12-126.2 of title twelve of the code of the preceding municipality, and (iv) the amount of member or employee contributions to a retirement system or pension fund picked up or paid by the employer for members of the Manhattan and Bronx surface transportation authority pension plan and treated as employer contributions in determining income tax treatment under subdivision (h) of section four hundred fourteen of the Internal Revenue Code.

(f) "Net earnings from self-employment" means the same as net earnings from self-employment as defined in subsection (a) of section fourteen hundred two of the internal revenue code, except that the deduction for wages and salaries paid or incurred for the taxable year which is not allowed pursuant to section two hundred eighty-c of such code shall be allowed, and except that an estate or trust shall be deemed to have net earnings from self-employment determined in the same manner as if it were an individual subject to the tax on self-employment income imposed by section fourteen hundred one of the internal revenue code diminished by: (1) the amount of any deduction allowed by subsection (c) of section six hundred forty-two of the internal revenue code and (2) the deductions allowed by sections six hundred fifty-one and six hundred sixty-one of such code to the extent that they represent distributions or payments to a resident of the city. However, "trade or business" as used in subsection (a) of section fourteen hundred two of such code shall mean the same as trade or business as defined in subsection (c) of section fourteen hundred two of such code, except that paragraphs four, five and six of such subsection shall not apply in determining net earnings from self-employment taxable under this chapter. Provided, however, in the case of a nonresident individual or partner of a partnership doing an insurance business described in section six thousand two

hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes shall not be considered to be "net earnings from self-employment".

(g) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(h) Resident individual. A resident individual means an individual:

(1) who is domiciled in the city, unless (A) he or she maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in the city, or (B) (i) within any period of five hundred forty-eight consecutive days he or she is present in a foreign country or countries for at least four hundred fifty days, and (ii) during such period of five hundred forty-eight consecutive days he or she is not present in the city for more than ninety days and does not maintain a permanent place of abode in the city at which his or her spouse, unless such spouse is legally separated, or minor children are present for more than ninety days, and (iii) during any period of less than twelve months which would be treated as a separate taxable period pursuant to section 11-1919 of this chapter, and which period is contained within such period of five hundred forty-eight consecutive days, he or she is present in the city for a number of days which does not exceed an amount which bears the same ratio to ninety as the number of days contained in such period of less than twelve months bears to five hundred forty-eight, or

(2) who is not domiciled in the city but maintains a permanent place of abode in the city and spends in the aggregate more than one hundred eighty-three days of the taxable year in the city, unless such individual is in active service in the armed forces of the United States.

(i) Nonresident individual. A nonresident individual means an individual who is not a resident.

(j) Resident estate or trust. A resident estate or trust means:

(1) the estate of a decedent who at his or her death was domiciled in the city,

(2) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his or her death was domiciled in the city, or

(3) a trust, or portion of a trust, consisting of the property of:

(A) a person domiciled in the city at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(B) a person domiciled in the city at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

For the purposes of this subdivision, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time, to revest title in the person whose property constitutes such trust or portion of a trust, and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated.

(k) Nonresident estate or trust. A nonresident estate or trust means an estate or trust which is not a resident.

(l) Unless a different meaning is clearly required, any terms used in this chapter shall have the same meaning as when used in a comparable

context in the laws of the United States relating to federal taxes but such meaning shall be subject to the exceptions or modifications prescribed in or pursuant to article two-E of the general city law or by the laws of this state. Any reference in this chapter to the internal revenue code, the internal revenue code of nineteen hundred eighty-six or to the laws of the United States shall mean the provisions of the internal revenue code of nineteen hundred eighty-six, unless a reference to the internal revenue code of nineteen hundred fifty-four is clearly intended, and amendments thereto, and other provisions of the laws of the United States relating to federal taxes, as the same are included in the appendix and supplement to the appendix to this chapter. The quotation of such laws of the United States is intended to make them a part of this chapter and to avoid constitutional uncertainties which might result if such laws were merely incorporated by reference. The quotation of a provision of the federal internal revenue code or of any other law of the United States shall not necessarily mean that it is applicable to or has relevance to this chapter.

(m) With respect to any taxable year beginning in nineteen hundred seventy, until and including the thirty-first day of December, nineteen hundred seventy-one, "administrator" shall be read as "state tax commission"; "administrative agencies of the city" shall be read as "administrative agencies of the state"; "depositories or financial agents of the city" shall be read as "depositories or financial agents of the state"; "officers or employees of the department of finance of the city" shall be read as "officers or employees of the state department of taxation and finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 of this chapter "city" shall be read as "state"; "corporation counsel or other appropriate officer of the city" or "corporation counsel of the city" shall be read as "state attorney general"; and the words "it" or "its" shall apply instead of the pronouns used where the reference is to tax commission. Provided, however, with respect to declarations of estimated tax and payments of such tax and the withholding tax requirements, until and including the thirty-first day of December, nineteen hundred seventy-one, any such terms shall be so read with respect to any taxable year or other period beginning in nineteen hundred seventy-one.

(n) The term "partnership" shall include, unless a different meaning is clearly required, a subchapter K limited liability company. The term "subchapter K limited liability company" shall mean a limited liability company classified as a partnership for federal income tax purposes. The term "limited liability company" means a domestic limited liability company or a foreign limited liability company, as defined in section one hundred two of the limited liability company law, a limited liability investment company formed pursuant to section five hundred seven of the banking law, or a limited liability trust company formed pursuant to section one hundred two-a of the banking law.

§ 11-1902 Persons subject to tax. (a) Imposition of tax. (1) A tax is hereby imposed for each taxable year ending on or after July first, nineteen hundred sixty-six and on or before December thirty-first, nineteen hundred seventy and for each taxable year beginning after December thirty-first, nineteen hundred ninety-nine, 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 one-fourth of one percent on all wages.

(ii) A tax at the rate of three-eighths of one percent on all net 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

major portions thereof, of the taxable year occurring after July first, nineteen hundred sixty-six is of the number of months, or major portions thereof, in the taxable year.

(2)(i) In lieu of the method of computation of tax prescribed in paragraph one of this subdivision, if the taxpayer maintains adequate records for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven, the tax for such taxable year, at the election of the taxpayer, may be computed on the basis of the wages which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning July first, nineteen hundred sixty-six, and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven, and the net earnings from self-employment which the taxpayer would have reported for federal income tax purposes had he or she filed a self-employment tax return for a taxable year beginning July first, nineteen hundred sixty-six and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven.

(ii) For purposes of this paragraph, the exclusions allowable under section 11-1902 of this subchapter shall be reduced by a fraction, the numerator of which is the number of months, or major portions thereof, of the taxable year occurring before July first, nineteen hundred sixty-six, and the denominator of which is the number of months, or major portions thereof, in the taxable year. Except as provided in this paragraph, the tax for such period ending on or before June thirtieth, nineteen hundred sixty-seven, shall be computed in accordance with the other provisions of this chapter.

§ 11-1904 Allocation to the city. (a) General. If net earnings from self-employment are derived from services performed, or from sources, within and without the city, there shall be allocated to the city a fair and equitable portion of such earnings.

(b) Allocation of net earnings from self-employment.

(1) Place of business. If a taxpayer has no regular place of business outside the city all of his or her net earnings from self-employment shall be allocated to the city.

(2) Allocation by taxpayer's books. The portion of net earnings from self-employment allocable to the city may be determined from the books and records of a taxpayer's trade or business, if the methods used in keeping such books and the accuracy thereof are approved by the commissioner as fairly and equitably reflecting net earnings from self-employment within the city.

(3) Allocation by formula. If paragraph two of this subdivision does not apply to the taxpayer, the portion of net earnings from self-employment allocable to the city shall be determined by multiplying (A) net earnings from self-employment within and without the city, by (B) the average of the following three percentages:

(i) Property percentage. The percentage computed by dividing (A) the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with net earnings from self-employment and located within the city, by (B) the average of the value, at the beginning and end of the taxable year, of all real and tangible personal property connected with the net earnings from self-employment and located both within and without the city. For this purpose, real property shall include real property whether owned or rented.

(ii) Payroll percentage. The percentage computed by dividing (A) the total wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on within the city, by (B) the total of all wages, salaries and other personal service compensation paid or incurred during the taxable year to employees in connection with the net earnings from self-employment derived from a trade or business carried on both within and without the city.

(iii) Gross income percentage. The percentage computed by dividing (A) the gross sales or charges for services performed by or through an agency located within the city, by (B) the total of all gross sales or charges for services performed within and without the city. The sales or charges to be allocated to the city shall include all sales negotiated or consummated, and charges for services performed, by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise with, or sent out from, offices or other agencies of the trade or business from which a taxpayer is deriving net earnings from self-employment, situated within the city.

(c) Other allocation methods. The portion of net earnings from self-employment allocable to the city shall be determined in accordance with rules and regulations of the commissioner if it shall appear to the commissioner that the net earnings from self-employment are not fairly and equitably reflected under the provisions of subdivision (b) of this section.

(d) Special rules for real estate. Income and deductions from the rental of real property and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subdivision (b) or (c) of this section, but shall be considered as entirely derived from or connected with the place in which such property is located.

§ 11-1905 Accounting periods and methods. (a) Accounting periods. A taxpayer's taxable year under this chapter shall be the same as his or her taxable year for federal income tax purposes.

(b) Change of accounting periods. If a taxpayer's taxable year is changed for federal income tax purposes, his or her taxable year for purposes of this chapter shall be similarly changed. If a taxable period of less than twelve months results from a change of taxable year, the exclusion allowable under section 11-1902 of this subchapter shall be prorated under regulations of the commissioner.

(c) Accounting methods. A taxpayer's method of accounting under this chapter shall be the same as his or her method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, net earnings from self-employment within the city shall be computed under such method as in the opinion of the commissioner clearly reflects net earnings from self-employment within the city.

(d) Change of accounting methods. (1) If a taxpayer's method of accounting is changed for federal income tax purposes, his or her method of accounting for purposes of this chapter shall be similarly changed.

(2) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, beginning after July first, nineteen hundred sixty-six,

not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(3) If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, in accordance with regulations of the commissioner.

§ 11-1908 Withholding of tax on wages. On or after the first payroll period beginning August twenty-seventh, nineteen hundred sixty-six, every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this chapter shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter. The method of determining the amount to be withheld shall be prescribed by regulations of the commissioner.

§ 11-1909 Withholding of tax on wages for taxable periods commencing on or after January first, nineteen hundred seventy-six. The provisions contained in sections 11-1908, 11-1910, 11-1911, 11-1912, 11-1913 and 11-1914 of this subchapter shall not be applicable to taxes imposed for taxable periods commencing on or after January first, nineteen hundred seventy-six provided however, with respect to such periods, the provisions contained in part V of article twenty-two of the tax law shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of the tax law shall mean the aggregate amounts of New York state personal income tax, city earnings tax on nonresidents and city personal income tax on residents authorized pursuant to article thirty of the tax law required to be deducted and withheld and provided, however, that the provisions of such paragraphs shall not be applicable to employer's returns required to be filed with respect to taxes required to be deducted and withheld during the calendar year nineteen hundred seventy-six, but such returns shall be required to be filed with the tax commission at the times and in the manner provided for in subdivision (a) of section 11-1912 of this subchapter, except the term "commission" in such subdivision shall be read as "tax commission." This section shall not apply to payments by the United States for service in the armed forces of the United States so long as the right to require deduction and withholding of tax from such payments is prohibited by the laws of the United States. Service in the armed forces of the United States shall have the same meaning as when used in a comparable context in the laws of the United States relating to withholding of city income taxes.

§ 11-1910 Information statement for employee. Every employer required to deduct and withhold tax under this chapter from the wages of an employee, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the commissioner showing the total amount of wages paid by the employer to the employee, the amount

of wages paid for services performed within the city, the amount deducted and withheld as tax, and such other information as the commissioner may prescribe. The written statement required under this section may be furnished to such employee in an electronic format.

§ 11-1911 Credit for tax withheld. Wages upon which tax is required to be withheld shall be taxable under this chapter as if no withholding were required, but any amount of tax actually deducted and withheld under this chapter in any calendar year shall be deemed to have been paid on behalf of the employee from whom withheld, and such employee shall be credited with having paid that amount of tax in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the commissioner.

§ 11-1912 Employer's return and payment of withheld taxes. (a) General. On or after the first payroll period beginning August twenty-seventh, nineteen hundred sixty-six, every employer required to deduct and withhold tax under this chapter shall, for each calendar month, on or before the fifteenth day of the month following the close of such calendar month file a withholding return as prescribed by the commissioner and pay over to the commissioner or to the depository designated by the commissioner, the taxes so required to be deducted and withheld, except that for the month of December in any year the returns shall be filed and the taxes paid on or before January thirty-first of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer under this chapter and under chapter seventeen of this title is less than twenty-five dollars in a calendar month and the aggregate of such taxes for the semi-annual period ending on June thirtieth and December thirty-first can reasonably be expected to be less than one hundred fifty dollars, the commissioner may, by regulation, permit an employer to file a return on or before July thirty-first for the semi-annual period ending on June thirtieth and on or before January thirty-first for the semi-annual period ending on December thirty-first. The commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make a return and pay to him or her the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this chapter and under chapter seventeen of this title to require the withholding of tax from the wages of any of his or her employees, the commissioner may, by regulation, permit such employer to file an annual return on or before February twenty-eighth of the following calendar year.

(b) Combined returns. The commissioner may by regulation provide for the filing of one return which shall include the return required to be filed under this section, together with the employer's return required to be filed under chapter seventeen of this title.

(c) Deposit in trust for city. Whenever any employer fails to collect, truthfully account for, pay over the tax, or make returns of the tax as required in this section, the commissioner may serve a notice requiring such employer to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the commissioner, in a separate account, in trust for the city and payable to the commissioner, and to keep the amount of such tax in such account until payment over to the commissioner. Such notice shall remain in effect until a notice of cancellation is served by the commissioner.

§ 11-1913 Employer's liability for withheld taxes. Every employer required to deduct and withhold the tax under this chapter is hereby made liable for such tax. For purposes of assessment and collection,

any amount required to be withheld and paid over to the commissioner, and any additions to tax, penalties and interest with respect thereto shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this chapter shall be held to be a special fund in trust for the city. No employee shall have any right of action against his or her employer in respect to any monies deducted and withheld from his or her wages and paid over to the commissioner in compliance or in intended compliance with this chapter.

§ 11-1914 Employer's failure to withhold. If an employer fails to deduct and withhold the tax, as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

§ 11-1915 Combined returns, employer's returns and payments. The state tax commission may require:

(1) The filing of any or all of the following:

(A) A combined return which in addition to the return provided for in this chapter may also include returns required to be filed under a law authorized by article thirty of the tax law and under article twenty-two of the tax law.

(B) A combined employer's return which in addition to the employer's return provided for by this chapter may also include employer's returns required to be filed under a law authorized by article thirty of the tax law and under article twenty-two of the tax law.

(2) Where a combined return or employer's return is required, and with respect to the payment of estimated tax, the state tax commission may also require payment of a single amount which shall be the total of the amounts, total taxes less any credits or refunds, required to be paid with the returns or employer's returns or in payment of estimated tax pursuant to the provisions of this chapter, a law authorized by article thirty of the tax law and pursuant to the provisions of article twenty-two of the tax law.

## SUBCHAPTER 2
## RETURNS AND PAYMENT OF TAX

§ 11-1916 Returns and payment of tax. (a) General. On or before the fifteenth day of the fourth month following the close of the taxable year, every person subject to the tax shall make and file a return and any balance of the tax shown due on the face of such return shall be paid therewith. The commissioner may, by regulation, provide for the filing of returns and payment of the tax at such other times as he or she deems necessary for the proper enforcement of this chapter. The commissioner may also provide by regulation that any return otherwise required to be made and filed under this chapter by any nonresident individual need not be made and filed if such nonresident individual had, during the taxable year to which the return would relate, no net earnings from self-employment within the city. Any regulation allowing such waiver of return may provide for additional limitations on and conditions and prerequisites to the privilege of not filing a return.

(b) Decedents. The return for any deceased individual shall be made and filed by his or her executor, administrator, or other person charged with his or her property. If a final return of a decedent is for a fractional part of a year, the due date of such return shall be the

fifteenth day of the fourth month following the close of the twelve-month period which began with the first day of such fractional part of the year.

(c) Individuals under a disability. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property, other than a receiver in possession of only a part of his or her property, or by his or her duly authorized agent.

(d) Estates and trust. The return for an estate or trust shall be made and filed by the fiduciary.

(e) Joint fiduciaries. If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(f) Cross reference. For provisions as to information returns by partnerships, employers and other persons, see section 11-1921 of this subchapter.

§ 11-1917 Time and place for filing returns and paying tax. A person required to make and file a return under this chapter shall, without assessment, notice or demand, pay any tax due thereon to the commissioner on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return. The commissioner shall prescribe by regulation the place for filing any return, statement, or other document required pursuant to this chapter and for payment of any tax.

§ 11-1918 Signing of returns and other documents. (a) General. Any return, statement or other document required to be made pursuant to this chapter shall be signed in accordance with regulations or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by such individual.

(b) Partnerships. Any return, statement or other document required of a partnership shall be signed by one or more partners. The fact that a partner's name is signed to a return, statement, or other document, shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Certifications. The making or filing of any return, statement or other document or copy thereof required to be made or filed pursuant to this chapter, including a copy of a federal return, shall constitute a certification by the person making or filing such return, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

§ 11-1919 Change of residence status during year. (a) General. If an individual changes his or her status during his or her taxable year from resident to nonresident, or from nonresident to resident, he or she shall file a return as a nonresident for the portion of the year during which he or she is a nonresident if he or she is subject to the tax imposed by this chapter or, if not subject to such tax, an information return for the portion of the year during which he or she is a nonresident, subject to such exceptions as the commissioner may prescribe by regulation. Such information return shall be due at the same time as the return required by chapter seventeen of this title for the portion of the year during which such individual is a resident.

(b) City taxable wages and net earnings from self-employment for portion of year individual is a nonresident. The city taxable wages and net earnings from self-employment for the portion of the year during

which he or she is a nonresident shall be determined, except as provided in subdivision (c) of this section, under this chapter as if his or her taxable year for federal income tax purposes were limited to the period of his or her nonresident status.

(c) Special accruals. (1) If an individual changes his or her status from resident to nonresident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible, whether or not because of an election to report on an installment basis, or allowable for city earnings tax purposes for such portion of the taxable year for a prior taxable year. The amounts of such accrued items shall be determined as if such accrued items were includible or allowable for federal self-employment tax purposes.

(2) If an individual changes his or her status from nonresident to resident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible, whether or not because of an election to report on an installment basis, or allowable for federal self-employment tax purposes for such portion of the taxable year or for prior taxable year. The amounts of such accrued items shall be determined if such accrued items were includible or allowable for federal self-employment tax purposes.

(3) No item of income, gain, loss or deduction which is accrued under this subdivision shall be taken into account in determining city adjusted wages earned, or net earnings from self-employment, within the city, for any subsequent taxable period.

(4) Where an individual changes his or her status from resident to nonresident, the accruals under this subdivision shall not be required if the individual files with the commissioner a bond or other security acceptable to the commissioner, conditioned upon the inclusion of amounts accruable under this subdivision in city adjusted gross income under chapter seventeen of this title for one or more subsequent taxable years as if the individual has not changed his or her resident status. In such event, the tax under this chapter shall not apply to such amounts.

(d) Prorations. Where an individual changes his or her status during his or her taxable year from resident to nonresident or from nonresident to resident, the exclusion allowable under subdivision (b) of section 11-1902 of this chapter shall be prorated, under regulations of the commissioner, to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident.

§ 11-1920 Extension of time. (a) General. The commissioner may grant a reasonable extension of time for payment of tax or estimated tax, or any installment, or for filing any return, statement, or other document required pursuant to this chapter, on such terms and conditions as he or she may require. Except for a taxpayer who is outside the United States or who intends to claim nonresident status pursuant to subparagraphs (i), (ii) and (iii) of paragraph one of subdivision (h) of section 11-1901 of this chapter, no such extension for filing any return, statement or other document, shall exceed six months.

(b) Furnishing of security. If any extension of time is granted for payment of any amount of tax, the commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the

amount for which the extension of time for payment is granted, on such terms and conditions as the commissioner may require.

§ 11-1921 Requirements concerning returns, notices, records and statements. (a) General. The commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the commissioner may deem sufficient to show whether or not such person is liable under this chapter for tax or for collection of tax.

(b) Partnerships. Every partnership doing business in the city and having no partners who are residents shall make a return for the taxable year setting forth all items of income, gain, loss and deduction and such other pertinent information as the commissioner may by regulations and instructions prescribe. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. For purposes of this subdivision, "taxable year" means year or period which would be a taxable year of the partnership if it were subject to tax under this chapter.

(c) Information at source. The commissioner may prescribe regulations and instructions requiring returns of information to be made and filed on or before February twenty-eighth of each year as to the payment or crediting in any calendar year of amounts of six hundred dollars or more to any taxpayer under this chapter. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer. A duplicate of the statement as to tax withheld on wages, required to be furnished by an employer to an employee, shall constitute the return of information required to be made under this section with respect to such wages.

(d) Notice of qualification as receiver, etc. Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his or her qualifications as such to the commissioner, as may be required by regulation.

§ 11-1922 Report of change in federal or New York state taxable income. If the amount of a taxpayer's federal or New York state taxable income or self-employment income reported on his or her federal or New York state tax return for any taxable year is changed or corrected by the United States internal revenue service or the New York state commissioner of taxation and finance or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States or New York state or if a taxpayer, pursuant to subsection (d) of section six thousand two hundred thirteen of the internal revenue code, executes a notice of waiver of the restrictions provided in subsection (a) of said section or if a taxpayer, pursuant to subdivision (f) of section six hundred eighty-one of the tax law executes a notice of waiver of the restrictions provided in subdivision (c) of said section, or if any tax on self-employment income in addition to that shown on his or her return is assessed, the taxpayer shall report such change or correction in federal or New York state taxable income or such execution of such notice of waiver or such assessment and the changes or

corrections of his or her federal or New York state taxable income or self-employment income on which it is based, within ninety days after the final determination of such change, correction, or renegotiation, or such execution of such notice of waiver or the making of such assessment as otherwise required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal or New York state income or self-employment income tax return shall also file within ninety days thereafter an amended return under this chapter, and shall give such information as the commissioner may require. The commissioner may by regulation prescribe such exceptions to the requirements of this section as he or she deems appropriate. For purposes of this section, (i) the term "taxpayer" shall include a partnership having any income derived from city sources, and (ii) the term "federal income tax return" shall include the returns of income required under section six thousand thirty-one of the internal revenue code. Reports made under this section by a partnership shall indicate the portion of the change in each item of income, gain, loss or deduction allocable to each partner and shall set forth such identifying information with respect to such partner as may be prescribed by the commissioner.

## SUBCHAPTER 3
## PROCEDURE AND ADMINISTRATION

§ 11-1923 Notice of deficiency. (a) General. If upon examination of a taxpayer's return under this chapter the commissioner determines that there is a deficiency of tax, he or she may mail a notice of deficiency to the taxpayer. If a taxpayer fails to file a return required under this chapter, the commissioner is authorized to estimate the taxpayer's wages and net earnings from self-employment or the wages from which taxes are required to be deducted and withheld and the tax thereon, from any information in the commissioner's possession, and to mail a notice of deficiency to the taxpayer. A notice of deficiency shall be mailed by certified or registered mail to the taxpayer at such taxpayer's last known address in or out of the city. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last known address in or out of the city, unless the commissioner has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(b) Notice of deficiency as assessment. The notice of deficiency shall be an assessment of the amount of tax specified in such notice, together with the interest, additions to tax and penalties stated in such notice.

(c) Restrictions on collection and levy. No notice and demand for payment of an assessment of a deficiency in tax made by a notice of deficiency and no levy or proceeding in court for its collection shall be made, begun or prosecuted, except as otherwise provided in section 11-1937 of this subchapter, until the expiration of the time for filing a petition contesting such notice, nor, if a petition with respect to the taxable year has been filed with the commissioner, until the decision of the commissioner has become final. After a petition has been filed the restriction provided herein shall not apply to such part of the deficiency as is not contested by the petition. For exception in the case of judicial review of the decision of the commissioner, see subdivision (c) of section 11-1932 of this subchapter.

(d) Exceptions for mathematical errors. If a mathematical error appears on a return, including an overstatement of the credit for tax

withheld at the source or of the amount paid as estimated tax, the commissioner shall notify the taxpayer that an amount of tax in excess of that shown upon the return is due, and that such excess has been assessed. Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1929 of this subchapter, limiting credits or refunds after petition to the commissioner, or subdivision (b) of section 11-1931 of this subchapter, authorizing the filing of a petition with the commissioner based on a notice of deficiency, nor shall collection of such assessment be prohibited by the provisions of subdivision (c) of this section.

(e) Exception where change in federal or New York state taxable income is not reported (1) If the taxpayer fails to comply with section 11-1922 of this chapter in not reporting a change or correction increasing his or her federal or New York state taxable income or self-employment income as reported on such taxpayer's federal or New York state tax return or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state tax purposes or in not filing an amended return or in not reporting the execution of a notice of waiver or an assessment described in such section, instead of the mode and time of assessment and collection provided for in subdivision (b) of this section, the commissioner may assess a deficiency based upon such changed or corrected federal or New York state taxable income or self-employment income by mailing to the taxpayer a notice of additional tax due specifying the amount of the deficiency, and such deficiency, together with the interest, additions to tax and penalties stated in such notice, shall be deemed assessed and subject to collection procedures on the date such notice is mailed unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-1922 of this chapter is filed accompanied by a statement showing wherein such federal or New York state determination of such notice of additional tax due are erroneous.

(2) Such notice shall not be considered as a notice of deficiency for the purposes of this section, subdivision (f) of section 11-1929 of this subchapter, limiting credits or refunds after petition to the commissioner, or subdivision (b) of section 11-1931 of this subchapter, authorizing the filing of a petition with the commissioner based on a notice of deficiency, nor shall the collection of such assessment be prohibited by the provisions of subdivision (c) of this section.

If the taxpayer is deceased or under a legal disability, a notice of additional tax due may be mailed to his or her last known address in or out of the city, unless the commissioner has received notice of the existence of a fiduciary relationship with respect to the taxpayer.

(f) Waiver of restrictions. The taxpayer shall at any time have the right to waive the mailing of a notice of deficiency or restriction on collection of the whole or any part of the deficiency, or both, by a signed notice in writing filed with the commissioner.

(g) Deficiency defined. For purposes of this chapter, a deficiency means the amount of the tax imposed by this chapter, less (1) the amount shown as the tax upon the taxpayer's return, whether the return was made or the tax computed by the taxpayer or by the commissioner, and less, (2) the amounts previously assessed, or collected without assessment, as a deficiency and plus (3) the amount of any rebates. For the purpose of this definition, the tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on

account of estimated tax or the credit for withholding tax; and a rebate means so much of an abatement, refund or other repayment, whether or not erroneous, made on the ground that the amounts entering into the definition of a deficiency showed a balance in favor of the taxpayer.

§ 11-1924 Assessment. (a) Assessment date. The amount of tax which a return shows to be due, or the amount of tax which a return would have shown to be due but for a mathematical error, shall be deemed to be assessed on the date of filing of the return, including any amended return showing an increase of tax. In the case of a return properly filed without computation of tax, the tax computed by the commissioner shall be deemed to be assessed on the date on which payment is due. If a notice of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date on which it is mailed. If an amended return or report filed pursuant to section 11-1922 of this chapter concedes the accuracy of a federal or New York state adjustment, change or correction, any deficiency in tax under this chapter resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return, and such assessment shall be timely notwithstanding section 11-1925 of this subchapter. If a notice of additional tax due, as prescribed in subdivision (e) of section 11-1923 of this subchapter, has been mailed, the amount of the deficiency shall be deemed to be assessed on the date specified in such subdivision unless within thirty days after the mailing of such notice a report of the federal or New York state change or correction or an amended return, where such return was required by section 11-1922 of this chapter, is filed accompanied by a statement showing wherein such federal or New York state determination and such notice of additional tax due are erroneous. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions.

(b) Other assessment powers. If the mode or time for the assessment of any tax under this chapter, including interest, additions to tax and assessable penalties, is not otherwise provided for, the commissioner may establish the same by regulations.

(d) Supplemental assessment. The commissioner may, at any time within the period prescribed for assessment, make a supplemental assessment, subject to the provisions of section 11-1923 of this subchapter where applicable, whenever it is ascertained that any assessment is imperfect or incomplete in any material respect.

(e) Cross reference. For assessment in case of jeopardy, see section 11-1937 of this subchapter.

§ 11-1925 Limitations on assessment. (a) General. Except as otherwise provided in this section, any tax under this chapter shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed.

(b) Exceptions. (1) Assessment at any time. The tax may be assessed at any time if:

(A) no return is filed,

(B) a false or fraudulent return is filed with intent to evade tax, or

(C) the taxpayer fails to comply with section 11-1922 of this chapter in not reporting a change or correction increasing his or her federal or New York state taxable income or self-employment income as reported on the taxpayer's federal or New York state tax return, or the execution of a notice of waiver and the changes or corrections on which it is based or in not reporting an assessment or a change or correction which is

treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, or in not filing an amended return.

(2) Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of tax, both the commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Report of changed or corrected federal or New York state income. If the taxpayer shall, pursuant to section 11-1922 of this chapter, report a change or correction or file an amended return increasing the taxpayer's federal or New York state taxable income or earnings from self-employment or report an assessment or a change or correction which is treated in the same manner as if it were a deficiency for federal or New York state income tax purposes, the assessment, if not deemed to have been made upon the filing of the report or amended return, may be made at any time within two years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in city tax on earnings attributable to such federal or New York state change or correction. The provisions of this paragraph shall not affect the time within which or the amount for which an assessment may otherwise be made.

(4) Recovery of erroneous refund. An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within two years from the making of the refund, except that the assessment may be made within five years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

(5) Request for prompt assessment. If a return is required for a decedent or for the decedent's estate during the period of administration, the tax shall be assessed within eighteen months after written request therefor, made after the return is filed, by the executor, administrator or other person representing the estate of such decedent, but not more than three years after the return was filed, except as otherwise provided in this subdivision and subdivision (c) of this section.

(c) Omission of income on return. The tax may be assessed at any time within six years after the return was filed if a taxpayer omits from a return an amount properly includible therein which is in excess of twenty-five per centum of the amount of the gross income derived by the taxpayer from any trade or business.

For purposes of this subdivision there shall not be taken into account any amount which is omitted in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the commissioner of the nature and amount of such item.

(d) Suspension of running of period of limitation. The running of the period of limitations on or collection of tax or other amount, or of a transferee's liability, shall, after the mailing of a notice of deficiency, be suspended for the period during which the commissioner is prohibited under subdivision (c) of section 11-1923 of this subchapter collecting by levy or proceeding in court.

§ 11-1926 Interest on underpayment. (a) General. If any amount of tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the appropriate rates prescribed for

underpayments of tax under chapter seventeen of this title shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar. If the time for filing a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(c) Exception for mathematical error. No interest shall be imposed on any underpayment of tax due solely to mathematical error if the taxpayer files a return within the time prescribed in this chapter, including any extension of time, and pays the amount of underpayment within three months after the due date of such return, as it may be extended.

(d) No interest on interest. No interest under this chapter shall be imposed on any interest provided by this chapter.

(e) Suspension of interest on deficiencies. If a waiver of restrictions on collection of an assessment of a deficiency has been filed by the taxpayer, and if notice and demand by the commissioner for payment of such assessed deficiency is not made within thirty days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such thirtieth day and ending with the date of notice and demand.

(f) Interest treated as tax. Interest under this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as tax. Any reference in this chapter to the tax imposed by this chapter shall be deemed also to refer to interest imposed by this section on such tax.

(g) Interest on penalties or additions to tax. Interest shall be imposed under subdivision (a) of this section in respect of any assessable penalty or addition to tax only if such assessable penalty or addition to tax is not paid within ten days from the date of the notice and demand therefor under subdivision (b) of section 11-1934 of this subchapter, and in such case interest shall be imposed only for the period from such date of the notice and demand to the date of payment.

(h) Payment prior to notice of deficiency. If, prior to the mailing to the taxpayer of a notice of deficiency under subdivision (b) of section 11-1923 of this subchapter, the commissioner mails to the taxpayer a notice of proposed increase of tax and within thirty days after the date of the notice of proposed increase the taxpayer pays all amounts shown on the notice to be due to the commissioner, no interest under this section on the amount so paid shall be imposed for the period after the date of such notice of proposed increase.

(i) Payment within ninety days after notice of deficiency. If a notice of deficiency under section 11-1923 of this subchapter is mailed to the taxpayer, and the total amount specified in such notice is paid on or before the ninetieth day after the date of mailing, interest under this section shall not be imposed for the period after the date of the notice.

(j) Payment within ten days after notice and demand. If notice and demand is made for payment of any amount under subdivision (b) of section 11-1934 of this subchapter, and if such amount is paid within ten days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(k) Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the

period within which the tax or other amount to which such interest relates may be assessed and collected, respectively.

(l) Interest on erroneous refund. Any portion of tax or other amount which has been erroneously refunded, and which is recoverable by the commissioner, shall bear interest at the rate of six per centum per annum from the date of the payment of the refund, but only if it appears that any part of the refund was induced by fraud or a misrepresentation of a material fact.

(m) Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

§ 11-1927 Additions to tax and civil penalties. (a) Failure to file tax return. In case of failure to file a tax return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For this purpose, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(b) Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of this chapter or rules or regulations hereunder, but without intent to defraud, there shall be added to the tax an amount equal to five percent of the deficiency.

(c) Failure to file declaration or underpayment of estimated tax. If any taxpayer fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax, the taxpayer shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate of six per centum upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to seventy percent of the tax attributable to net earnings from self employment shown on the tax return for the taxable year, or if no return was filed, of the tax so attributable for such year, over the amount, if any, of the installment paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to a declaration or installment otherwise due on or after the taxpayer's death.

(d) Exception to addition for underpayment of estimated tax. The addition to tax under subdivision (c) of this section with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

(A) The tax attributable to net earnings from self-employment shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(B) An amount equal to seventy percent of the tax so attributable for the taxable year computed by placing on an annualized basis the taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable net earnings from self-employment shall be placed on an annualized basis by:

(i) multiplying by twelve, or, in the case of a taxable year of less than twelve months, the number of months in the taxable year, the taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) deducting from such amount the proper proportion of the exclusion allowable for the taxable year by subdivision (b) of section 11-1902 of this chapter; or

(2) An amount equal to ninety percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable net earnings from self-employment for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) Deficiency due to fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any other addition to tax imposed by subdivision (a) or (b) of this section.

(f) Non-willful failure to pay withholding tax. If any employer, without intent to evade or defeat any tax imposed by this chapter or the payment thereof, shall fail to make a return and pay a tax withheld by him or her at the time required by or under provisions of section 11-1912 of this chapter, such employer shall be liable for such tax and shall pay the same together with interest thereon and the addition to tax provided in subdivision (a) of this section, and such interest and addition to tax shall not be charged to or collected from the employee by the employer. The commissioner shall have the same rights and powers for the collection of such tax, interest and addition to tax against such employer as are now prescribed by this chapter for the collection of tax against an individual taxpayer.

(g) Willful failure to collect and pay over tax. Any person required to collect, truthfully account for, and pay over the tax imposed by this chapter who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No addition to tax under subdivision (b) or (e) of this section shall be imposed for any offense to which this subdivision applies.

(h) Failure to file certain information returns. In case of each failure to file a statement of a payment to another person, required under authority of subdivision (c) of section 11-1921 of this chapter, relating to information at source, including the duplicate statement of tax

withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not willful neglect, there shall, upon notice and demand by the commissioner and in the same manner as tax, be paid by the person so failing to file the statement, a penalty of one dollar for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed one thousand dollars.

(i) Additional penalty. Any person who with fraudulent intent shall fail to pay, or to deduct or withhold and pay, any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this chapter, shall be liable to a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter, to be imposed, assessed and collected by the commissioner. The commissioner shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(j) Additions treated as tax. The additions to tax and penalties provided by this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as taxes, and any reference in this chapter to tax or tax imposed by this chapter, shall be deemed also to refer to the additions to tax and penalties provided by this section. For purposes of section 11-1923 of this subchapter, this subdivision shall not apply to:

(1) any addition to tax under subdivision (a) of this section except as to that portion attributable to a deficiency;

(2) any addition to tax under subdivision (c) of this section; and

(3) any additional penalty under subdivision (i) of this section.

(k) Determination of deficiency. For purposes of subdivisions (b) and (e) of this section, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(l) Person defined. For purposes of subdivisions (g) and (i) of this section, the term "person" includes an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 11-1928 Overpayment. (a) General. The commissioner, within the applicable period of limitations, may credit an overpayment of tax and interest on such overpayment against any liability in respect of any tax imposed by this chapter or by another chapter or chapters of this title on the person who made the overpayment, and the balance shall be refunded. Any refund under this section shall be made only upon the filing of a return.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his or her tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under section 11-1908 of this chapter, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Credits against estimated tax. The commissioner may prescribe regulations providing for the crediting against the estimated tax for

any taxable year of the amount determined to be an overpayment of the tax for a preceding taxable year. If any overpayment of tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the tax for the succeeding taxable year, whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year, and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(e) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as tax, such amount shall be considered an overpayment.

(f) Assessment and collection after limitation period. If any amount of tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

(g) Notwithstanding any provision of law in article fifty-two of the civil practice law and rules to the contrary, the procedures for the enforcement of money judgments shall not apply to the department of finance, or to any officer or employee of the department of finance, as a garnishee, with respect to any amount of money to be refunded or credited to a taxpayer under this chapter.

§ 11-1929 Limitations on credit or refund. (a) General. Claim for credit or refund of an overpayment of tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within two years from the time the tax was paid. If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the three year period, but is filed within the two year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

(b) Extension of time by agreement. If an agreement under the provisions of paragraph two of subdivision (b) of section 11-1925 of this subchapter, extending the period for assessment of tax, is made within the period prescribed in subdivision (a) of this section for the filing of a claim for credit or refund, the period for filing a claim for credit or refund, or for making credit or refund if no claim is filed, shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subdivision (a) of this section if a claim had been filed on the date the agreement was executed.

(c) Notice of change or correction of federal or New York state income. If a taxpayer is required by section 11-1922 of this chapter to report a change or correction in federal or New York state taxable income or self-employment income reported on his or her federal or New York state tax return, or to report an assessment or a change or

correction which is treated in the same manner as if it were an overpayment for federal or New York state income tax purposes, or to file an amended return with the commissioner, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the commissioner. If the report or amended return required by section 11-1922 of this chapter is not filed within the ninety day period therein specified, interest on any resulting refund or credit shall cease to accrue after such nineti-eth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal or New York state change, correction or items amended on the taxpayer's amended federal or New York state income tax or self-employment tax return. This subdivision shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subdivision.

(d) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subdivision (e) of this section or subdivision (d) of section 11-1932 of this subchapter after the expiration of the applicable period of limitation specified in this chapter unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this chapter.

(e) Effect of petition to commissioner. If a notice of deficiency for a taxable year has been mailed to the taxpayer under section 11-1923 of this subchapter and if the taxpayer files a timely petition with the commissioner under section 11-1931 of this subchapter, the commissioner may determine that the taxpayer has made an overpayment for such year, whether or not the commissioner also determines a deficiency for such year. No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except:

(1) as to overpayments determined by a decision of the commissioner which has become final;

(2) as to any amount collected in excess of an amount computed in accordance with the decision of the commissioner which has become final;

(3) as to any amount collected after the period of limitation upon the making of levy for collection has expired; and

(4) as to any amount claimed as a result of a change or correction described in subdivision (c) of this section.

(f) Limit on amount of credit or refund. The amount of overpayment determined under subdivision (e) of this section shall, when the decision of the commissioner has become final, be credited or refunded in accordance with subdivision (a) of section 11-1928 of this subchapter and shall not exceed the amount of tax which the commissioner determines as part of his or her decision was paid:

(1) after the mailing of the notice of deficiency, or

(2) within the period which would be applicable under subdivision (a), (b) or (c) of this section, if on the date of the mailing of the notice of deficiency a claim has been filed, whether or not filed, stating the grounds upon which the commissioner finds that there is an overpayment.

(g) Early return. For purposes of this section, any return filed before the last day prescribed for the filing thereof shall be consid-

ered as filed on such last day, determined without regard to any extension of time granted the taxpayer.

(h) Prepaid tax. For purposes of this section, any tax paid by the taxpayer before the last day prescribed for its payment, any tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated tax for a taxable year shall be deemed to have been paid by the taxpayer on the fifteenth day of the fourth month following the close of his or her taxable year with respect to which such amount constitutes a credit or payment.

(i) Return and payment of withholding tax. Notwithstanding subdivision (g) of this section, for purposes of this section with respect to any withholding tax:

(1) if a return for any period ending with or within a calendar year is filed before April fifteenth of the succeeding calendar year, such return shall be considered filed on April fifteenth of such succeeding calendar year; and

(2) if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April fifteenth of the succeeding calendar year, such tax shall be considered paid on April fifteenth of such succeeding calendar year.

(j) Cross reference. For provision barring refund of overpayment credited against tax of a succeeding year, see subdivision (d) of section 11-1928 of this subchapter.

§ 11-1930 Interest on overpayment. (a) General. Notwithstanding the provisions of section three-a of the general municipal law, interest shall be allowed and paid as follows at the appropriate rates prescribed for overpayments of tax under chapter seventeen of this title upon any overpayment in respect of the tax imposed by this chapter:

(1) from the date of the overpayment to the due date of an amount against which a credit is taken; or

(2) from the date of the overpayment to a date, to be determined by the commissioner, preceding the date of a refund check by not more than thirty days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

No interest shall be allowed or paid if the amount thereof is less than one dollar.

(b) Advance payment of tax, payment of estimated tax, and credit for tax withholding. The provisions of subdivisions (g), (h) and (i) of section 11-1929 of this subchapter applicable in determining the date of payment of tax for purposes of determining the period of limitations on credit or refund, shall be applicable in determining the date of payment for purposes of this section.

(c) Refund within three months of due date of tax. If any overpayment of tax imposed by this chapter is refunded within three months after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within three months after the return was filed, whichever is later, no interest shall be allowed under this section on such overpayment.

(d) Cross-reference. For provision terminating interest after failure to file notice of federal or New York state change under section 11-1922 of this chapter, see subdivision (c) of 11-1929 of this subchapter.

§ 11-1931 Petition to commissioner. (a) General. The form of a petition to the commissioner, and further proceedings before the commissioner in any case initiated by the filing of a petition, shall be governed

by such rules as the commissioner shall prescribe. No petition shall be denied in whole or in part without opportunity for a hearing on reasonable prior notice. Such hearing shall be conducted by the commissioner, or by a hearing officer designated by the commissioner to take evidence and report to the commissioner. The commissioner shall decide the case as quickly as practicable. Notice of the decision shall be mailed promptly to the taxpayer by certified or registered mail at his or her last known address and such notice shall set forth the commissioner's findings of fact and a brief statement of the grounds of decision in each case decided in whole or in part adversely to the taxpayer. Any portion of an assessment of a deficiency disallowed by the commissioner's decision, shall be forthwith abated, or if paid, credited or refunded to the taxpayer without the making of a claim therefor.

(b) Petition for redetermination of a deficiency. Within ninety days, or one hundred fifty days if the notice is addressed to a person outside of the United States, after the mailing of the notice of deficiency authorized by section 11-1923 of this subchapter, the taxpayer may file a petition with the commissioner for a redetermination of the deficiency. Such petition may also assert a claim for refund for the same taxable year or years, subject to the limitations of subdivision (f) of section 11-1929 of this subchapter.

(c) Petition for refund. A taxpayer may file a petition with the commissioner for the amounts asserted in a claim for refund if:

(1) the taxpayer has filed a timely claim for refund with the commissioner,

(2) the taxpayer has not previously filed with the commissioner a timely petition under subdivision (b) of this section for the same taxable year unless the petition under this subdivision relates to a separate claim for credit or refund properly filed under subdivision (e) of section 11-1929 of this subchapter, and

(3) either: (A) six months have expired since the claim was filed, or (B) the commissioner has mailed to the taxpayer, by registered or certified mail, a notice of disallowance of such claim in whole or in part. No petition under this subdivision shall be filed more than two years after the date of mailing of a notice of disallowance, unless prior to the expiration of such a two-year period it has been extended by written agreement between the taxpayer and the commissioner. If a taxpayer files a written waiver of the requirement that he or she be mailed a notice of disallowance, the two year period prescribed by this subdivision for filing a petition for refund shall begin on the date such waiver is filed.

(d) Assertion and assessment of deficiency after filing petition.

(1) Petition for redetermination of deficiency. If a taxpayer files with the commissioner a petition for redetermination of a deficiency, the commissioner shall have power to determine and assess a greater deficiency than asserted in the notice of deficiency and to determine and assess any addition to tax or penalty provided in section 11-1927 of this subchapter, if claim therefor is asserted at or before the hearing and within the period in which an assessment would be timely under section 11-1925 of this subchapter under the rules of the commissioner.

(2) Petition for refund. If the taxpayer files with the commissioner a petition for credit or refund for a taxable year, the commissioner may:

(A) determine and assess a deficiency for such year as to any amount of deficiency claim, which shall be an assessment, for which is asserted at or before the hearing under rules of the commissioner, and within the

period in which an assessment would be timely under section 11-1925 of this subchapter, or

(B) deny so much of the amount for which credit or refund is sought in the petition, as is offset by other issues pertaining to the same taxable year which are asserted at or before the hearing under rules of the commissioner.

(3) Opportunity to respond. A taxpayer shall be given a reasonable opportunity to respond to any matters asserted by the commissioner under this subdivision.

(4) Restriction on further notices of deficiency. If the taxpayer files a petition with the commissioner under this section, no notice of deficiency under section 11-1923 of this subchapter may thereafter be issued by the commissioner for the same taxable year, except in case of fraud or with respect to a change or correction in federal or New York state taxable income or self-employment income required to be reported under section 11-1922 of this chapter.

(e) Burden of proof. In any case before the commissioner under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commissioner:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, except where the petitioner's liability arises by reason of section 11-1936 of this subchapter, but not to show that the taxpayer was liable for the tax; and

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under this section filed, unless such increase in deficiency is the result of a change or correction of federal or New York state taxable income or self-employment income required to be reported under section 11-1922 of this chapter, and of which change or correction the commissioner had no notice at the time he or she mailed the notice of deficiency.

(f) Evidence of related federal determination. Evidence of a federal determination relating to issues raised in a case before the commissioner under this section shall be admissible, under rules established by the commissioner.

(g) Jurisdiction over other years. The commissioner shall consider such facts with relation to the taxes for other years as may be necessary correctly to determine the tax for the taxable year, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

§ 11-1932 Review of commissioner's decision. (a) General. A decision of the commissioner shall be subject to judicial review for error, illegality or unconstitutionality at the instance of any taxpayer affected thereby in the manner provided by law for the review of a final decision or action of administrative agencies of the city. An application by a taxpayer for such review must be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer.

(b) Judicial review exclusive remedy of taxpayer. The review of a decision of the commissioner provided by this section shall be exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for the taxes imposed by this chapter.

(c) Collection pending review; review bond. Irrespective of any restrictions on the collection of assessments for deficiencies, the

commissioner may collect by levy or, otherwise any assessment of a deficiency after the expiration of the period specified in subdivision (a) of this section, notwithstanding that an application for judicial review in respect of such deficiency has been duly made by the taxpayer, unless the taxpayer, at or before the time his or her application for review is made, has paid the assessed deficiency, has deposited with the commissioner the amount of the assessed deficiency, or has filed with the commissioner a bond, which may be a jeopardy bond under subdivision (h) of section 11-1937 of this subchapter, in the amount of the portion of the assessed deficiency, including interest and other amounts, in respect of which the application for review is made with surety approved by a justice of the supreme court of the state of New York, conditioned upon the payment of the assessed deficiency, including interest and other amounts, as finally determined. If as a result of a waiver of the restrictions on the collection of a deficiency any part of the amount determined by the commissioner is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced. A similar bond for all costs and charges which may accrue against the taxpayer in the prosecution of such judicial review proceeding must be filed with the commissioner before any such proceeding is instituted.

(d) Credit, refund or abatement after review. If the amount of a deficiency assessed and determined by the commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if payment has not been made, shall be abated.

(e) Date of finality of commissioner's decision. A decision of the commissioner shall become final upon the expiration of the period specified in subdivision (a) of this section for making an application for review, if no such application has been duly made within such time, or if such application has been duly made, upon expiration of the time for all further judicial review, or upon the rendering by the commissioner of a decision in accordance with the mandate of the court on review. Provided, however, for the purpose of making an application for review, the decision of the commissioner shall be deemed final on the date the notice of decision is sent by certified or registered mail to the taxpayer.

§ 11-1933 Mailing rules; holidays. (a) Timely mailing. If any claim, statement, notice, petition, or other document, including to the extent authorized by the commissioner, a return or declaration of estimated tax, required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by the United States mail to the commissioner, bureau, office, officer or person with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the commissioner, bureau, office, officer or person with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner, bureau, office, officer or person to which or to whom addressed. To the extent that the commis-

sioner shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This subdivision shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by regulations of the commissioner.

(b) Last known address. For purposes of this chapter, a taxpayer's last known address shall be the address given in the last return filed by the taxpayer, unless subsequent to the filing of such return the taxpayer shall have notified the commissioner of a change of address.

(c) Last day a Saturday, Sunday or legal holiday. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on Saturday, Sunday, or a legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

§ 11-1934 Collection, levy and liens. (a) Collection procedures. The taxes imposed by this chapter shall be collected by the commissioner, and he or she may establish the mode or time for the collection of any amount due the commissioner under this chapter if not otherwise specified. The commissioner shall, upon request, give a receipt for any sum collected under this chapter. The commissioner may authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under this chapter in such manner, at such times, and under such conditions as the commissioner may prescribe; and the commissioner shall prescribe the manner, times and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the commissioner.

(b) Notice and demand for tax. The commissioner shall as soon as practicable and, in the case of an assessment the collection of which is restricted by the provisions of subdivision (c) of section 11-1923 of this subchapter, as soon as practicable after the expiration of such restrictions give notice to each person liable for any amount of tax, addition to tax, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to such person's last known address. Except where the commissioner determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c) Issuance of warrant after notice and demand. If any person liable under this chapter for the payment of any tax, addition to tax, penalty or interest neglects or refuses to pay the same within ten days after notice and demand therefor is given to such person under subdivision (b) of this section, the commissioner may within six years after the date of the expiration of the period of restriction on the collection of such assessment issue a warrant directed to the sheriff of any county of the state, or to any officer or employee of the department of finance of the city, commanding the sheriff or such officer or employee to levy upon and sell such person's real and personal property for the payment of the amount assessed, with the cost of executing the warrant, and to return such warrant to the commissioner and pay to him or her the money collected by virtue thereof within sixty days after the receipt of the warrant. If the commissioner finds that the collection of tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commissioner and upon failure or refusal to pay

such tax or other amount the commissioner may issue a warrant without regard to the ten-day period provided in this subdivision.

(d) Copy of warrant to be filed and lien to be created. Any sheriff or officer or employee who receives a warrant under subdivision (c) of this section shall within five days thereafter file a copy with the clerk of the appropriate county. The clerk shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the tax or other amounts for which the warrant is issued and the date when such copy is filed; and such amount shall thereupon be a binding lien upon the real, personal and other property of the taxpayer.

(e) Judgment. When a warrant has been filed with the county clerk the commissioner shall, on behalf of the city, be deemed to have obtained judgment against the taxpayer for the tax or other amounts.

(f) Execution. The sheriff or officer or employee shall thereupon proceed upon the judgment in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and a sheriff shall be entitled to the same fees for such sheriff's services in executing the warrant, to be collected in the same manner. An officer or employee of the department of finance of the city may proceed in any county or counties of this state and shall have all the powers of execution conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in connection with the execution of the warrant.

(g) Taxpayer not then a resident. Where a notice and demand under subdivision (b) of this section shall have been given to a taxpayer who is not then a resident of this state, and it appears to the commissioner that it is not practicable to find in this state property of the taxpayer sufficient to pay the entire balance of tax or other amount owing by such taxpayer who is not then a resident of this state, the commissioner may, in accordance with subdivision (c) of this section, issue a warrant directed to an officer or employee of the department of finance of the city a copy of which warrant shall be mailed by certified or registered mail to the taxpayer at his or her last known address, subject to the rules for mailing provided in subdivision (a) of section 11-1933 of this subchapter. Such warrant shall command the officer or employee to proceed in the city, and such officer or employee shall, within five days after receipt of the warrant, file the warrant and obtain a judgment in accordance with this section. Thereupon the commissioner may authorize the institution of any action or proceeding to collect or enforce the judgment in any place and by any procedure where and by which a civil judgment of the supreme court of the state of New York could be collected or enforced. The commissioner may also, in his or her discretion, designate agents or retain counsel for the purpose of collecting, outside the state of New York, any unpaid taxes, additions to tax, penalties or interest which have been assessed under this chapter against taxpayers who are not then residents of this state, may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof, and may require of them bonds or other security for the faithful performance of their duties, in such form and in such amount as the commissioner shall deem proper and sufficient.

(h) Action by the city for recovery of taxes. Action may be brought by the corporation counsel or other appropriate officer of the city at the insistence of the commissioner to recover the amount of any unpaid

taxes, additions to tax, penalties or interest which have been assessed under this chapter within six years prior to the date the action is commenced. The period during which collection of any assessment is prohibited by subdivision (c) of section 11-1923 of this subchapter, shall be added to such six years.

(i) Release of lien. The commissioner, if he or she finds that the interest of the city will not thereby be jeopardized, and upon such conditions as may require, may release any property from the lien of any warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to this section, and such release may be recorded in the office of any recording officer in which such warrant has been filed.

§ 11-1935 Transferees. (a) General. The liability, at law or in equity, of a transferee of property of a taxpayer for any tax, additions to tax, penalty or interest due to the city under this chapter, shall be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the tax to which liability relates, except that the period of limitations for assessment against the transferee shall be extended by one year for each successive transfer, in order, from the original taxpayer to the transferee involved, but not by more than three years in the aggregate. The term "transferee" includes donee, heir, legatee, devisee and distributee; and also includes a person liable for the amount of any tax, additions to tax, penalty or interest under the provisions of section 11-1936 of this subchapter.

(b) Exceptions. (1) If before the expiration of the period of limitations for assessment of liability of the transferee, a claim has been filed by the commissioner in any court against the original taxpayer or the last preceding transferee based upon the liability of the original taxpayer, then the period of limitation for assessment of liability of the transferee shall in no event expire prior to one year after such claim has been finally allowed, disallowed or otherwise disposed of.

(2) If, before the expiration of the time prescribed in subdivision (a) of this section or paragraph one of this subdivision for the assessment of the liability, the commissioner and the transferee have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee of overpayments of tax made by such transferee or overpayments of tax made by the transferor as to which the transferee is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in subdivision (b) of section 11-1929 of this subchapter. If the agreement is executed after the expiration of the period of limitation for assessment against the original taxpayer, then in applying the limitations under subdivision (b) of section 11-1929 of this subchapter on the amount of the credit or refund, the periods specified in subdivision (a) of section 11-1929 of this subchapter shall be increased by the period from the date of such expiration to the date of the agreement.

(c) Deceased transferor. If any person is deceased, the period of limitation for assessment against such person shall be the period that would be in effect if he or she had lived.

(d) Evidence. Notwithstanding the provisions of section 11-1942 of this subchapter, the commissioner shall use his or her powers to make

available to the transferee evidence necessary to enable the transferee to determine the liability of the original taxpayer and of any preceding transferees, but without undue hardship to the original taxpayer or preceding transferee. See subdivision (e) of section 11-1931 of this subchapter for rule as to burden of proof.

§ 11-1936 Liability of bulk transferees. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee, that it owes any tax pursuant to this chapter, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the commissioner required by this section, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes, theretofore or thereafter determined to be due to the city from the seller, transferor or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this chapter.

§ 11-1937 Jeopardy determination or assessment. (a) Authority for making. If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he or she shall, notwithstanding the provisions of sections 11-1923 and 11-1939 of this subchapter, immediately assess or proceed to collect such deficiency, together with all interest, penalties and additions to tax provided for by law, and notice and demand shall be made by the commissioner for the payment thereof.

(b) Notice of deficiency. If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 11-1923 of this subchapter, then the commissioner shall mail a notice under such section within sixty days after making of the assessment.

(c) Amount assessable before decision of commissioner. The jeopardy assessment may be made in respect of a deficiency greater or less than that of which notice is mailed to the taxpayer and whether or not the taxpayer has therefor filed a petition with the commissioner. The

commissioner may, at any time before rendering his or her decision, abate such assessment or any unpaid portion thereof, to the extent that he or she believes the assessment to be excessive in amount. The commissioner may in his or her decision redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount assessable after decision of commissioner. If the jeopardy assessment of determination of jeopardy is made after the decision of the commissioner is rendered, such assessment or determination may be made only in respect of the deficiency determined by the commissioner in his or her decision.

(e) Expiration of right to assess. A jeopardy determination may not be made after the decision of the commissioner has become final or after the taxpayer has made an application for review of the decision of the commissioner.

(f) Collection of unpaid amounts. When a petition has been filed with the commissioner and when the amount which should have been assessed has been determined by a decision of the commissioner which has become final, then any unpaid portion, the collection of which has been stayed by bond, shall be collected as part of the tax upon notice and demand from the commissioner, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 11-1928 of this subchapter without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the commissioner.

(g) Abatement if jeopardy does not exist. The commissioner may abate the jeopardy determination if he or she finds that jeopardy does not exist. Such abatement may not be made after a decision of the commissioner in respect of the deficiency has been rendered or, if no petition is filed with the commissioner, after the expiration of the period for filing such petition. The period of limitation on the making of a levy or a proceeding for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated has not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy determination until the expiration of the tenth day after the day on which such jeopardy determination is abated.

(h) Bond to stay collection. The collection of the whole or any amount of any assessment determined to be in jeopardy may be stayed by filing with the commissioner, within such time as may be fixed by regulation, a bond in an amount equal to the amount as to which the stay is desired conditioned upon the payment of the amount, together with interest thereon, the collection of which is stayed at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond, the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond and, if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, or if a notice of deficiency under section 11-1923 of this subchapter is mailed to the taxpayer in a lesser

amount, the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) Petition to commissioner. If the bond is given before the taxpayer has filed his or her petition under section 11-1931 of this subchapter, the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. The bond shall be conditioned upon the payment of so much of such assessment, collection of which is stayed by the bond, as is not abated by a decision of the commissioner which has become final. If the commissioner determines that the amount assessed is greater than the amount which should have been assessed, then the bond shall, at the request of the taxpayer, be proportionately reduced when the decision of the commissioner is rendered.

(j) Stay of sale of seized property pending commissioner's decision. Where a jeopardy assessment or a determination of jeopardy is made, the property seized for the collection of the tax shall not be sold:

(1) if subdivision (b) of this section is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 11-1931 of this subchapter for filing a petition with the commissioner, and

(2) if a petition is filed with the commissioner, whether before or after the making of such jeopardy assessment or determination, prior to the expiration of the period during which the collection of the deficiency assessed would be prohibited if subdivision (a) of this section were not applicable.

Such property may be sold if the taxpayer consents to the sale, or if the commissioner determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or if the property is perishable.

(k) Interest. For the purpose of subdivision (a) of section 11-1926 of this subchapter, the last date prescribed for payment shall be determined without regard to any notice and demand for payment issued under this section prior to the last date otherwise prescribed for such payment.

(l) Early termination of taxable year. If the commissioner finds that a taxpayer designs quickly to depart from this state or to remove his or her property therefrom, or to conceal himself or herself or his or her property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the current or the preceding taxable year unless such proceedings be brought without delay, the commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding brought to enforce payment of taxes made due and payable by virtue of the provisions of this subdivision, the finding of the commissioner made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(m) Reopening of taxable period. Notwithstanding the termination of the taxable period of the taxpayer by the commissioner as provided in subdivision (1) of this section, the commissioner may reopen such taxable period each time the taxpayer is found by the commissioner to have received wages or net earnings from self-employment, within the current taxable year, since the termination of such period. A taxable period so terminated by the commissioner may be reopened by the taxpayer if he or she files with the commissioner a true and accurate return of taxable wages and net earnings from self-employment under this chapter for such taxable period, together with such other information as the commissioner may by regulation prescribe.

(n) Furnishing of bond where taxable year is closed by the commissioner. Payment of taxes shall not be enforced by any proceedings under the provisions of subdivision (1) of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the commissioner, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any taxes for prior years.

§ 11-1938 Criminal penalties. (a) Attempt to evade tax. Any individual, corporation or partnership or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the commissioner thereunder, shall fail to pay the tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under the provisions of this chapter, or who, with like intent, shall make, render, sign or certify any false or fraudulent return, declaration or statement, or shall supply any false or fraudulent information, or who shall fail to comply with the provisions of subdivision (b) of section 11-1912 of this chapter after the service of a notice by the commissioner thereunder, shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed five thousand dollars or be imprisoned not to exceed one year, or both, at the discretion of the court.

(b) Limitations. Notwithstanding the provisions of section 30.10 of the criminal procedure law or of any other law of this state, a prosecution for any offense under this section may be commenced at any time not later than three years after the commission of such offense provided that, if such offense is the failure to do an act required by or under any provision of this chapter to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date.

(c) Willful failure to withhold. Any individual, corporation or partnership or any officer or employee of any corporation, including a dissolved corporation, or member or employee of any partnership, who willfully fails to collect or pay over any withholding tax as required, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five thousand dollars or imprisoned not to exceed one year, or both.

(d) Two or more charges. In the prosecution of offenses under this section, if there are two or more charges against any person or corporation, involving a violation or violations of any provision or provisions of this chapter, whether for the same or different taxable years, instead of returning several indictments or filing several informations, all of such charges may be joined in one indictment or information, in separate counts, and if two or more indictments are found, or two or more informations are filed, the court may order them to be

consolidated. If a person or corporation shall be convicted of two or more offenses constituting different crimes set forth in different counts of one indictment or information, or in separate indictments or informations consolidated as hereinbefore provided, the court may impose a separate sentence for each offense, and if imprisonment is imposed, the court may order any of such sentences to be served concurrently or consecutively.

(e) Miscellaneous rules. Any prosecution under this section may be conducted in any county where the person or corporation to whose tax liability the proceeding relates resides, or has a place of business, or in any county in which any such crime is committed. The corporation counsel of the city shall have concurrent jurisdiction with any district attorney in the prosecution of any offense under this section. If the provisions of this section conflict with those contained in any other law, this section shall control. The certificate of the commissioner to the effect that a tax has not been paid, that a return or declaration of estimated tax has not been filed, or that information has not been supplied, as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return or declaration has not been filed, or that such information has not been supplied. All fines levied under this section shall be paid to the commissioner and deposited in the same manner as revenues collected or received under this chapter.

§ 11-1939 Armed forces relief provisions. (a) Time to be disregarded. In the case of an individual serving in the armed forces of the United States or serving in support of such armed forces, in an area designated by the president of the United States by executive order as a "combat zone" at any time during the period designated by the president by executive order as the period of combatant activities in such zone, or hospitalized outside the state as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the state attributable to such injury, and the next one hundred eighty days thereafter, shall be disregarded in determining, under this chapter in respect of the tax liability, including any interest, penalty, or addition to the tax, of such individual:

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) filing any return of tax, except withholding tax;

(B) payment of any tax, except withholding tax, or any installment thereof or of any other liability to the commissioner, in respect thereof;

(C) filing a petition with the commissioner for credit or refund or for redetermination of a deficiency, or application for review of a decision rendered by the commissioner;

(D) allowance of a credit or refund of tax;

(E) filing a claim for credit or refund of tax;

(F) giving or making any notice or demand for the payment of any tax, or with respect to any liability to the commissioner in respect of tax;

(G) collection, by the commissioner, by levy or otherwise of the amount of any liability in respect of tax;

(H) bringing suit by the city, or any officer, on its behalf, in respect of any liability in respect of tax; and

(I) any other act required or permitted under this chapter or specified in the regulations prescribed under this section by the commissioner.

(2) The amount of any credit or refund, including interest.

(b) Action taken before ascertainment of right to benefits. The collection of the tax imposed by this chapter or of any liability to the commissioner in respect of such tax, or any action or proceeding by or on behalf of the commissioner in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subdivision (a) of this section, unless prior to such collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefit of subdivision (a) of this section.

(c) Members of armed forces dying in action. In the case of any person who dies while in active service as a member of the armed forces of the United States, if such death occurred while serving in a combat zone during a period of combatant activities in such zone, as described in subdivision (a) of this section, or as a result of wounds, disease or injury incurred while so serving, the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his or her death, or with respect to any prior taxable year ending on or after the first day so served in a combat zone, and no returns shall be required in behalf of such person or his or her estate for such year; and the tax for any such taxable year which is unpaid at the date of death, including interest, additions to tax and penalties, if any, shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be refunded to the legal representative of such estate if one has been appointed and has qualified, or, if no legal representative has been appointed or has qualified, to the surviving spouse.

§ 11-1940 General powers of commissioner. (a) General. The commissioner shall administer and enforce the tax imposed by this chapter and the commissioner is authorized to make such rules and regulations, and to require such facts and information to be reported, as the commissioner may deem necessary to enforce the provisions of this chapter and the commissioner may delegate his or her powers and functions under all subchapters of this chapter to one of his or her deputies or to any employee or employees of his or her department.

(b) Examination of books and witnesses. The commissioner for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable wages and net earnings from self-employment of any person, shall have power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, may take testimony and require proof material for the commissioner's information, with power to administer oaths to such person or persons and may issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or excused from attendance, and for the production of books, papers, records or memoranda.

(c) Abatement authority. The commissioner, of his or her own motion, may abate any small unpaid balance of an assessment of tax, or any liability in respect thereof, if the commissioner determines under uniform rules prescribed by him or her that the administration and collection costs involved would not warrant collection of the amount due. The commissioner may also abate, of his or her own motion, the unpaid portion of the assessment of any tax or any liability in respect thereof, which is excessive in amount, or is assessed after the expira-

tion of the period of limitation properly applicable thereto, or is erroneously or illegally assessed. No claim for abatement under this subdivision shall be filed by a taxpayer.

(d) Special refund authority. Where no questions of fact or law are involved and it appears from the records of the commissioner that any moneys have been erroneously or illegally collected from any taxpayer or other person, or paid by such taxpayer or other person under a mistake of facts, pursuant to the provisions of this chapter, the commissioner at any time, without regard to any period of limitations, shall have the power, upon making a record of his or her reasons therefor in writing, to cause such moneys so paid and being erroneously and illegally held to be refunded.

(e) Cooperation with the United States and other states. Notwithstanding the provisions of section 11-1942 of this subchapter, the commissioner may permit the secretary of the treasury of the United States or such secretary's delegates, or the proper tax officer of any other state imposing an income tax upon the income of individuals, or the authorized representative of either such officer, to inspect any return filed under this chapter, or may furnish to such officer or his or her authorized representative an abstract of any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this chapter, but such permission shall be granted or such information furnished to such officer or his or her representative only if the laws of the United States or of such state, as the case may be, grant substantially similar privileges to the commissioner and such information is to be used for tax purposes only; and provided further the commissioner may furnish to the commissioner of internal revenue or his or her authorized representative such returns filed under this chapter and other tax information as he or she may consider proper for the use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner by the secretary of the treasury of the United States or by his or her delegates, provided the laws of the United States grant substantially similar powers to the secretary of the treasury of the United States or such secretary's delegates. Where the commissioner has so authorized use of returns and other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other information.

§ 11-1941 Joint enforcement. (1) If there is assessed a tax under this chapter and there is also assessed a tax or taxes against the same taxpayer pursuant to article twenty-two of the tax law and if the commissioner of the tax imposed by this chapter takes action under the tax law with respect to the enforcement and collection of the tax or taxes assessed under such tax law, the commissioner shall, wherever possible, accompany such action with a similar action under similar enforcement and collection provisions of this chapter.

(2) Any monies collected as a result of such joint action shall be deemed to have been collected in proportion in the amounts due, including tax, penalties, interest and additions to tax under article twenty-two of the tax law and under this chapter.

(3) Whenever the commissioner takes any action with respect to a deficiency of personal income tax, under article twenty-two of the tax law other than the action set forth in subdivision one of this section the

commissioner may, in his or her discretion, accompany such action with a similar action under this chapter.

§ 11-1942 Secrecy requirement and penalties for violation. 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner or any other officer or employee of the department of finance of the city, any person engaged or retained by such commissioner or department on an independent contract basis, any depository to which any return may be delivered as provided in subdivision two of this section, any officer or employee of such depository, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or to whom any information contained in any report or return is furnished, to divulge or make known in any manner the amount of wages or earnings or any particulars set forth or disclosed in any report or return required under this chapter. The commissioner or any other officer and employee charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the city in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the city is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this chapter when the reports, returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of, and may admit in evidence, so much of said reports, returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more; except as provided in subdivision (e) of section 11-1940 of this subchapter. The commissioner may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing required under section 11-1931 of this subchapter of this chapter. Nothing in this section shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return or report filed in connection with his or her tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the legal representatives of the city of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter has been recommended by the commissioner. Reports and returns shall be preserved for three years and thereafter until the commissioner orders them to be destroyed. Any violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be the commissioner or any other officer or employee of the city, he or she shall be dismissed from office and be incapable of holding any public office in the city or the state for a period of five years thereafter.

2. Notwithstanding the provisions of subdivision one of this section, the commissioner of finance, in his or her discretion, may require or permit any or all individuals, estates or trusts, liable for any tax imposed by this chapter, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this chapter to banks, banking houses or trust companies designated by the commissioner of finance and to file declarations of estimated tax and reports and returns with such banks, banking houses or trust companies as agents of

the commissioner of finance, in lieu of making any such payment directly to the commissioner of finance. However, the commissioner of finance shall designate only such banks, banking houses or trust companies as are depositories or financial agents of Staten Island.

§ 11-1943 Provisions not applicable. The provisions contained in this subchapter shall not be applicable with respect to taxes imposed for taxable periods commencing on or after January first, nineteen hundred seventy-six but, with respect to the tax imposed for such periods the provisions contained in part VI of article twenty-two of the tax law and sections six hundred fifty-three, six hundred fifty-eight, six hundred sixty-two and thirteen hundred eleven of the tax law including the provisions of judicial review by a proceeding under article seventy-eight of the civil practice law and rules shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section except where inconsistent with the provisions of this chapter.

§ 11-1944 Deposit and disposition of revenues by commissioner. All taxes, penalties and interest imposed under this chapter which are paid to or collected by the commissioner of finance shall be deposited by the commissioner of finance in the general fund of the city.

§ 11-1945 Effect of invalidity in part; inconsistencies with other laws. (a) If any clause, sentence, paragraph, subdivision, section, provision or other portion of this chapter or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this chapter or the application of such portion held invalid, to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, provision or other portion thereof directly involved in such holding or to the person and circumstances therein involved.

(b) If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded or repealed to the extent of such inconsistency, conflict or contrariety.

## CHAPTER 20
## SALES, EXCISE AND RELATED TAXES
### SUBCHAPTER 1
### GENERAL SALES AND COMPENSATING USE TAXES

§ 11-2001 Imposition of general sales and compensating use taxes. (a) There are hereby imposed and there shall be paid all of the sales and compensating use taxes described in article twenty-eight of the tax law as authorized by subdivision (a) of section twelve hundred ten of the tax law, at the rate of four and one-half percent, provided that the taxes described in paragraph six of subdivision (c) of section eleven hundred five of the tax law shall be imposed and paid at the rate of six percent.

(b) Notwithstanding any contrary provision of this section or other law, this section: (1) does not impose tax on (i) receipts from the sale of the services of laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining described in subparagraph (ii) of paragraph three of subdivision (c) of section eleven hundred five of the tax law; (ii) receipts from the sale of services described in paragraph six of subdivision (c) of section eleven hundred five of the tax

law at facilities owned and operated by the city or an agency or instrumentality of the city or a public corporation the majority of whose members are appointed by the mayor or the city council or both of them; (2) for purposes of the tax described in subdivision (e) of section eleven hundred five of the tax law, defines "permanent resident" to mean any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days with regard to the period of such occupancy; (3) does not omit from the tax described in paragraph one of subdivision (f) of section eleven hundred five of the tax law charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools; (4) provides the clothing and footwear exemption in paragraph thirty of subdivision (a) of section eleven hundred fifteen of the tax law; (5) omits the exemption provided in paragraph forty-one of subdivision (a) of section eleven hundred fifteen of the tax law; (6) omits the exemption provided in subdivision (c) of section eleven hundred fifteen of the tax law insofar as it applies to fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of gas, electricity, refrigeration or steam; and (7) omits the provision for refund or credit contained in clause six of subdivision (a) of section eleven hundred nineteen of the tax law.

(c) The taxes imposed by this section shall be in addition to any and all other taxes authorized or imposed under any other provision of law.

(d) The taxes imposed by this section shall be administered and collected by the state commissioner of taxation and finance as provided in articles twenty-eight and twenty-nine of the tax law.

(e) The provisions of articles twenty-eight and twenty-nine of the tax law relating or applicable to the taxes imposed by this section, including the applicable definitions, transitional provisions, limitations, special provisions, exemptions, exclusions, refunds, credits and administrative provisions, so far as those provisions can be made applicable to the taxes imposed by this section, shall apply to the taxes imposed by this section with the same force and effect as if those provisions had been incorporated in full into this section and had expressly referred to the taxes imposed by this section, except to the extent that any provision of article twenty-eight or twenty-nine of the tax law is either inconsistent with or not relevant to the taxes imposed by this section.

(f) Net collections from the taxes imposed by this section paid to this city by the state comptroller shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

(g) If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 11-2002 Imposition of special sales taxes. (a) There are hereby imposed and there shall be paid sales taxes at the rate of four and one-half percent on receipts from every sale of the services of beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, Turkish and sauna bath and

similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith; but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title eight of the education law, as amended, and excluding such services when performed on pets and other animals, as authorized by subdivision (a) of section twelve hundred twelve-a of the tax law. Provided, however, that the tax hereby imposed shall not be imposed after November thirtieth, two thousand twenty-six.

(b) The taxes imposed by this section shall be in addition to any and all other taxes authorized or imposed under any other provision of law.

(c) The taxes imposed by this section shall be administered and collected by the state commissioner of taxation and finance as provided in articles twenty-eight and twenty-nine of the tax law.

(d) The provisions of articles twenty-eight and twenty-nine of the tax law relating or applicable to the taxes imposed by this section, including the applicable definitions, transitional provisions, limitations, special provisions, exemptions, exclusions, refunds, credits and administrative provisions, so far as those provisions can be made applicable to the taxes imposed by this section, shall apply to the taxes imposed by this section with the same force and effect as if those provisions had been incorporated in full into this section and had expressly referred to the taxes imposed by this section, except to the extent that any provision of article twenty-eight or twenty-nine of the tax law is either inconsistent with or not relevant to the taxes imposed by this section.

(e) Net collections from the taxes imposed by this section paid to this city by the state comptroller shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

(f) If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 11-2032 Construction and enforcement. This subchapter shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the state of New York pursuant to which the same is enacted.

## SUBCHAPTER 3
## SALES TAX ON CREDIT SERVICES, PROTECTIVE AND DETECTIVE SERVICES, INTERIOR DECORATING AND DESIGNING SERVICES, AND INTERIOR CLEANING AND MAINTENANCE SERVICES

§ 11-2039 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 purposes of the taxes imposed by this subchapter, the following terms shall mean:

(1) "Purchaser." A person who purchases 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.

§ 11-2040 Imposition of tax. (a) There is hereby imposed within the city and there shall be paid a tax at the rate of four and one-half percent upon the receipts from every sale, except for resale, of credit rating and credit reporting services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under article twenty-eight of the tax law; provided, however, that the tax hereby imposed shall not be imposed after November thirtieth, two thousand twenty-six, on receipts from sales of the services specified in this subdivision.

(b) Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in subdivision (a) of this section are not receipts subject to the taxes imposed by such subdivision.

(c) Any taxes imposed by this subchapter are in addition to any other tax which the city may impose or may be imposing pursuant to any law.

§ 11-2041 Transitional provisions. The taxes imposed under subdivision (a) of section 11-2040 of this subchapter shall be paid with respect to receipts from all sales of services on or after September first, nineteen hundred seventy-five although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly or other term basis, the charge for such service shall be subject to tax under this subchapter to the extent that such charge is applicable to any period on or after September first, nineteen hundred seventy-five, and such charge shall be apportioned on the basis of the ratio of the number of days falling within such period to the total number of days in the full term or period.

§ 11-2042 Exempt organizations. Except as otherwise provided in this section, any sale by or to any of the following shall not be subject to the taxes imposed by this subchapter:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or Canada, or political subdivisions where it is the purchaser, user or consumer, or where it is a

vendor of services or property of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in, including the publishing or distributing of statements any political campaign on behalf of any candidate for public office;

(5) A post or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans, but not war veterans, or are cadets, or are spouses, widows or widowers of war veterans or such individuals, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 11-2043 Refunds or credits based on proof of certain uses. A refund or credit equal to the amount of the sales or compensating use tax imposed by section eleven hundred seven of the tax law or by section 11-2001 of this chapter, as the case may be, and paid on the sale or use of tangible personal property which is later used by such purchaser in performing a service subject to tax under this subchapter shall be allowed such purchaser against the tax imposed by this subchapter and collected by such person on the sale of such services if such property has become a physical component part of the property upon which the service is performed or has been transferred to the purchaser of the service in conjunction with the performance of the service subject to tax; provided, however, that any such refund or credit shall be without interest.

§ 11-2044 Administration and collection. The taxes imposed by section 11-2040 of this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed by article twenty-eight of the tax law are administered and collected by such commission. All of the provisions of such article relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this subchapter, including sections eleven hundred one, eleven hundred eleven, and sections eleven hundred thirty-one through eleven hundred forty-seven inclusive, with the same force and effect as if those provisions had been incorporated in full into this subchapter and had expressly referred to the taxes imposed by this subchapter, except as otherwise provided in section twelve hundred fifty of the tax law. For purposes of this subchapter,

the term "tax" in part IV of such article twenty-eight of the tax law shall include the taxes imposed by this subchapter.

§ 11-2045 Deposit and disposition of revenue. (a) The tax commission shall deposit daily to the credit of the comptroller of the state of New York, all taxes, penalties and interest collected under this subchapter in such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept in trust for the city and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenue collected under this subchapter the comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance of the state of New York may determine to be necessary for refunds under this subchapter and for reasonable costs of the tax commission in administering, collecting and distributing the taxes under this subchapter, out of which the comptroller shall pay any refunds made under the provisions of this subchapter. The comptroller, after reserving such refund fund and such costs, shall on or before the twelfth day of each month, pay to the commissioner of finance of this city all taxes, interest and penalties collected under this subchapter and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to the commissioner of finance of this city. The amount so payable shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over in any such distribution is more or less than the amount then due to this city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to this city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(b) All payments to the commissioner of finance pursuant to subdivision (a) of this section shall be credited to and deposited in the general fund of this city, but no part of such revenues may be expended unless appropriated in the annual budget of this city.

§ 11-2046 Construction and enforcement. This subchapter shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the state of New York pursuant to which it is enacted.

§ 11-2047 Effective date. This subchapter shall take effect September first, nineteen hundred seventy-five except that certificates of registration may be filed with the state tax commission and certificates of authority to collect tax may be issued by the state tax commission prior 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

of this chapter or section eleven hundred seven of the tax law, as the case may be.

§ 11-2050 Transitional provisions. The taxes imposed by this subchapter shall be paid with respect to receipts from all sales of services on or after September first, nineteen hundred eighty although rendered or agreed to be rendered under a prior contract. Where a service is sold on a monthly, quarterly, yearly or other term basis, the charge for such service shall be subject to tax under this subchapter to the extent that such charge is applicable to any period on or after September first, nineteen hundred eighty, and such charge shall be apportioned on the basis of the ratio of the number of days falling within such period to the total number of days in the full term or period.

§ 11-2051 Exempt organizations and individuals. (a) Except as otherwise provided in this section, any sale by or to any of the following shall not be subject to the taxes imposed by this subchapter:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or Canada, or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services of a kind not ordinarily sold by private persons;

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer or where it sells services of a kind not ordinarily sold by private persons;

(3) The United Nations or any international organization of which the United States of America is a member where it is the purchaser, user or consumer, or where it sells services of a kind not ordinarily sold by private persons;

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, but only if no part of its activities involve the provision of athletic facilities or equipment, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended, and which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office;

(5) A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization:

(A) organized in this state,

(B) at least seventy-five percent of the members of which are past or present members of the armed forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows or widowers of past or present members of the armed forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) The following Indian nations or tribes residing in New York state: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shin-

necock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer;

(7) A not-for-profit corporation operating as a health maintenance organization subject to the provisions of article forty-four of the public health law; and

(8) Cooperative and foreign corporations doing business in this state pursuant to the rural electric cooperative law.

(b) Nothing in this section shall exempt sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph four or paragraph five of subdivision (a) of this section operating a garage, other than a garage which is part of premises occupied solely as a private one-family or two-family dwelling, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

(c) (1) For purposes of paragraph four of subdivision (a) of this section, in the case of a qualified amateur sports organization (A) the requirement of such paragraph that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and (B) such organization shall not fail to meet the requirement of such paragraph merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(d) The tax imposed by this subchapter shall not apply to any sale of services to an individual resident of the county in which such tax is imposed when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned or leased, but only in the case of a lease for a term of one year or more, by such individual resident. For purposes of this subdivision, the term "individual resident" means a natural person who maintains in such county a permanent place of abode which is such person's primary residence; the term "motor vehicle" means a motor vehicle which is registered pursuant to the vehicle and traffic law at the address of the primary residence referred to in this subdivision, or which is registered pursuant to the vehicle and traffic law and leased to an individual resident at the address of the primary residence referred to in this subdivision, and which is not used in carrying on any trade, business or commercial activity; and the term "lease for a term of one year or more" shall not include any lease the term of which is less than one year, irrespective of the fact that the cumulative period for which such lease may be in effect is one year or more as the result of the right to exercise an option to renew or other like provision.

§ 11-2052 Administration and collection; penalties; refunds. (a) The taxes imposed by this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed by article twenty-eight of the tax law are administered and collected by such commission. All of the provisions of such article relating to or applicable to the administration and collection of the taxes imposed by that article shall apply to the taxes imposed by this subchapter, including section eleven hundred one and sections eleven hundred thirty-one through eleven hundred forty-seven inclusive, with the same force and

effect as if those provisions had been incorporated in full into this subchapter and had expressly referred to the taxes imposed by this subchapter, except to the extent that any provisions of such article twenty-eight are either inconsistent with a provision of this subchapter, or of article twenty-nine of the tax law, or are not relevant to this subchapter or to article twenty-nine of the tax law. For purposes of this subchapter, the term "tax" in part IV of such article twenty-eight of the tax law shall include the taxes imposed by this subchapter.

(b) Notwithstanding subdivision (a) of this section or any other provision of law to the contrary, the tax commission shall, subject to such terms and conditions as it may consider necessary, delegate to the commissioner of finance the power and authority to develop and administer reasonable and necessary procedures, including the use of exemption certificates for presentation to vendors, for determining entitlement to exemption from tax under subdivision (d) of section 11-2051 of this subchapter, and to prescribe, subject to the approval of the tax commission, rules and regulations necessary and appropriate in carrying out such responsibilities.

(c) Any person who, in violation of any provision of subdivision (d) of section 11-2051 of this subchapter or any rule or regulation promulgated thereunder, obtains or uses a certificate of exemption relating to the exemption allowed by such subdivision, shall, if such violation was due to negligence or intentional disregard of such provision or rule or regulation, but without intent to defraud, be liable for a penalty of not more than one hundred dollars for each such violation, and, if such violation was due to fraud, be liable for a penalty of not more than five hundred dollars for each such violation. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty imposed pursuant to this subdivision. The penalties authorized by this subdivision shall be in addition to any penalty provided by section eleven hundred forty-five of the tax law, and shall be paid and disposed of, and, if unpaid, shall be determined, assessed, collected and enforced, in the same manner as the taxes imposed by this subchapter.

(d) Notwithstanding subdivision (d) of section 11-2051 of this subchapter, section eleven hundred thirty-nine of the tax law or any other provision of law to the contrary, an individual resident shall not be entitled to a refund or credit with respect to any amount of tax which was paid to a vendor prior to the date such individual resident presented to the vendor a valid certificate of exemption from such tax.

§ 11-2053 Deposit and disposition of revenue. (a) The tax commission shall deposit daily to the credit of the comptroller of the state of New York, all taxes, penalties and interest collected under this subchapter in such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept in trust for the city and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenue collected under this subchapter the comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance of the state of New York may determine to be necessary for refunds under this subchapter and for reasonable costs of the tax commission in administering, collecting and distributing the taxes under this subchapter, out of which the comptroller shall pay any refunds made under the provisions of this subchapter. The comptroller, after reserving such refund fund and such costs shall, on or before the twelfth day of each month, pay to the commis-

sioner of finance of this city all taxes, interest and penalties collected under this subchapter during the next preceding calendar month and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of such preceding month, provided, however, that the comptroller shall on or before the last day of June and December make a partial payment consisting of the collections made during and including the first twenty-five days of said months to the commissioner of finance of this city. The amount so payable shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. Provided, however, any such certification may be based on such information as may be available to the tax commission at the time such certificate must be made under this section and may be estimated on the basis of percentages or other indices calculated from distributions for prior periods. Where the amount so paid over in any such distribution is more or less than the amount then due to this city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the tax commission or such president's delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to this city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts and circumstances.

(b) All payments to the commissioner of finance pursuant to subdivision (a) of this section shall be credited to and deposited in the general fund of this city.

§ 11-2054 Construction and enforcement. This subchapter shall be construed and enforced in conformity with articles twenty-eight and twenty-nine of the tax law of the state of New York pursuant to which it is enacted.

## SUBCHAPTER 5
## TAX ON BEER AND LIQUOR

§ 11-2055 Definitions. When used in this subchapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, corporation, joint-stock company, and any combination of individuals, and also an executor, administrator, receiver, trustee or other fiduciary.

2. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process produced.

3. "Beers." All alcoholic beer, lager beer, ale, porter, and stout, and all other fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor containing one-half of one per centum, or more, of alcohol by volume.

4. "Liquors." Any and all distilled or rectified spirits, alcohol, brandy, cordial, whether the base therefor be wine or liquor, whiskey, rum, gin and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of such liquids, including any

alcoholic liquids which would be wines if the alcoholic content thereof were not more than twenty-four per centum by volume. Such term shall not include liquors containing not more than twenty-four per centum of alcohol by volume.

5. "Alcoholic beverages." Beer or liquors.

6. "Distributor." Any person who imports or causes to be imported into this city any alcoholic beverages which are or will be offered for sale or used for any commercial purpose; any purchaser of warehouse receipts for alcoholic beverages stored in a warehouse in this city who causes such beverages to be removed from such warehouse; and also any person who produces, distills, manufactures, brews, compounds, mixes or ferments any alcoholic beverages within this city for sale, except: (a) a person who manufactures, mixes or compounds alcoholic beverages the ingredients of which consist only of alcoholic beverages on which the taxes imposed by this subchapter have been paid, and (b) a person who mixes or compounds alcoholic beverages with non-alcoholic ingredients for sale and immediate consumption on the premises, who shall be a distributor only with respect to the ingredients which consist of alcoholic beverages upon which the taxes imposed by this subchapter have not been paid.

7. "Noncommercial importer." A person other than a distributor who imports or causes to be imported into this city alcoholic beverages, except that such person shall not be a noncommercial importer where he or she imports or causes to be imported into this city alcoholic beverages in the quantities and under the conditions provided by subdivision (e) of section 11-2056 of this subchapter.

8. "Sale." Any transfer, exchange or barter in any manner or by any means whatsoever. The sale of warehouse receipts given upon the storage of alcoholic beverages shall not be construed as a sale of the beverages represented by such receipts.

9. "Use." Any compounding or mixing of alcoholic beverages with other ingredients or other treatment of the same in such manner as to render them unfit or unsuitable for consumption as a beverage and also the actual consumption or possession for consumption of alcoholic beverages as a beverage or otherwise.

10. "Gallon." One hundred twenty-eight fluid ounces; "quart" means thirty-two fluid ounces.

11. "Liter." A metric unit of capacity equal to one thousand cubic centimeters of alcoholic beverages and equivalent to thirty-three and eight hundred fourteen thousandths fluid ounces.

12. "City." The city of Staten Island.

13. "Commissioner of finance." Commissioner of finance of the city.

14. "Tax commission." The tax commission of the state of New York.

15. Unless a different meaning is clearly required, any term used in this subchapter shall have the same meaning as when used in a comparable context in the laws of the state of New York relating to taxes on alcoholic beverages.

§ 11-2056 Imposition of tax. (a) There are hereby imposed on a distributor and a noncommercial importer excise taxes at the following rates:

(1) twelve cents per gallon upon beers; and

(2) twenty-six and four-tenths cents per liter upon liquors, when sold or used within this city, except when sold or used under such circumstances that this city is without power to impose such tax or when sold to the United States, and except beers when sold to or by a voluntary unincorporated organization of the armed forces of the United States

operating a place for the sale of goods pursuant to regulations promulgated by the appropriate executive agency of the United States, and except when sold to professional foreign consuls-general, consuls and vice-consuls who are nationals of the state appointing them and who are assigned to foreign consulates in this city provided that American consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country are granted reciprocal exemptions; provided, however, that the tax commission may permit the sale of alcohol without tax to a holder of any industrial alcohol permit, alcohol permit or alcohol distributor's permit, issued by the state liquor authority, and by the holder of an alcohol distributor's permit, class A, issued by such authority to a holder of a distiller's license, class B, or a winery license, issued by such authority and may also permit the use of alcohol for any purpose other than the production of alcoholic beverages by such holders without tax.

Notwithstanding any other provision of this subchapter, the tax commission may permit the purchase of liquors without tax by a holder of a distiller's license issued by the state liquor authority from another holder of a distiller's license by such authority, in which event the liquors so purchased shall be subject to the tax imposed by this subchapter in the hands of the purchaser in the same manner and to the same extent as if such purchaser had imported or caused the same to be imported into this city or had produced, distilled, manufactured, brewed, compounded, mixed or fermented the same within this city.

(b) There is also imposed on each person, other than a distributor within the meaning of this subchapter, who, on August first, nineteen hundred eighty, owns and possesses for the purposes of sale beers or liquors, a floor tax at the rates applicable under subdivision (a) upon such beer in excess of one hundred gallons and upon such liquor in excess of four hundred liters. Such floor tax shall be due and payable on the twentieth day of the month succeeding the month of August, nineteen hundred eighty.

(c) If, prior to August first, nineteen hundred eighty, a contract of sale of alcoholic beverages was made, and delivery thereof pursuant to such contract is made within this city on or after August first, nineteen hundred eighty, the vendor shall be deemed a distributor for the purposes of this subchapter, and such alcoholic beverages shall be deemed to be sold, and shall be subject to such taxes, at the time of such delivery.

(d) In any case where the quantity of alcoholic beverages taxable pursuant to this subchapter is a fractional part of one liter, or one gallon in the case of beers, or an amount greater than a whole multiple of liters, or gallons in the case of beers, the amount of tax levied and imposed on such fractional part of one liter, or one gallon in the case of beers, or fractional part of a liter, or gallon, in excess of a whole multiple of liters or gallons shall be such fractional part of the rate imposed by subdivisions (a) and (b) of this section.

(e) Notwithstanding any other provisions of this subchapter, there shall be exempt from the taxes imposed under this subchapter, per month, one quart of alcoholic beverages, or one gallon of such beverages in the case of a person arriving directly from American Samoa, Guam or the Virgin Islands of the United States not more than one quart of which shall have been acquired elsewhere than in such insular possessions:

(1) purchased outside this city as an incident to a journey from which the purchaser is returning and

(2) not to be offered for sale or used for any commercial purpose, provided such alcoholic beverages accompany such person on his or her return to this city and provided, further, that in the case of a person arriving in this city from other than a state of the United States, including the District of Columbia, the Virgin Islands of the United States or a contiguous country maintaining a free zone or free port, such person shall have remained beyond the territorial limits of the United States for a period of not less than forty-eight hours.

Provided, however, where the amounts purchased outside the city or brought in exceed the amounts specified in this subdivision but are not in excess of one liter in the case of the references to one quart or four liters in the case of the reference to one gallon, and where no duty is required by the laws of the United States to be paid on such amounts, such metric standards of fill shall be substituted for one quart and one gallon, respectively, and such amounts shall be exempt from tax under the conditions provided for in this subdivision.

§ 11-2057 Manner of administration and collection. All the provisions of article eighteen of the tax law shall apply to the taxes imposed by subdivision (a) of section 11-2056 of this subchapter, and the provisions of sections four hundred twenty, four hundred twenty-six, four hundred twenty-nine through four hundred thirty-four, four hundred thirty-six and four hundred thirty-seven of the tax law shall apply to the tax imposed by subdivision (b) of section 11-2056 of this subchapter, so far as such sections can be made applicable to the taxes imposed by this subchapter with such limitations as set forth in section four hundred forty-five of the tax law and such modifications as may be necessary in order to adapt such language to the taxes imposed by this subchapter.

§ 11-2058 State tax commission; administration. The taxes imposed by this subchapter shall be administered and collected by the tax commission in the same manner as the taxes imposed under sections four hundred twenty-four and four hundred twenty-five of the tax law subject to all provisions of that article as may be applicable. The tax commission may make such provisions as it deems necessary for the joint administration and collection of the state and local taxes imposed and authorized by article eighteen of the tax law and this subchapter. Nothing in such article eighteen or this subchapter which requires payment of both state and local taxes to the tax commission shall be construed as the payment of either tax more than once.

§ 11-2059 Disposition of revenues. All taxes, penalties and interest imposed by this subchapter, which are collected by the tax commission, shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the state comptroller, to the credit of the comptroller, in trust for this city. Such deposits shall be kept in trust and separate and apart from all other monies in the possession of the comptroller. The comptroller shall require adequate security from all such depositories of such revenues collected by the tax commission. The comptroller shall retain in his or her hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds in respect of the taxes imposed by this subchapter, and for reasonable costs of the state tax commission in administering, collecting and distributing such taxes, out of which the comptroller shall pay any refunds of such taxes to which taxpayers shall be entitled under the provisions of this subchapter. The comptroller, after reserving such refund and such costs shall, on or before the twelfth day of each month, pay to the commissioner of finance the taxes, penalties

and interest imposed by this subchapter, collected by the state tax commission pursuant to this subchapter during the next preceding calendar month. The amount so payable shall be certified to the comptroller by the president of the state tax commission or his or her delegate, who shall not be held liable for any inaccuracy in such certificate. Where the amount so paid over to the city in any such distribution is more or less than the amount then due to the city, the amount of the overpayment or underpayment shall be certified to the comptroller by the president of the state tax commission or his or her delegate, who shall not be held liable for any inaccuracy in such certificate. The amount of the overpayment or underpayment shall be so certified to the comptroller as soon after the discovery of the overpayment or underpayment as reasonably possible and subsequent payments and distributions by the comptroller to the city shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the comptroller and the president of the state tax commission shall consider reasonable in view of the amount of the overpayment or underpayment and all other facts or circumstances.

§ 11-2060 Construction. This subchapter shall be construed and enforced in conformity with section four hundred forty-five of the tax law, pursuant to which it is enacted.

## CHAPTER 21
## REAL PROPERTY TAX

§ 11-2101 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." 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, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

2. "Deed." Any document or writing, other than a will, regardless of where made, executed or delivered, whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed, including any such document or writing whereby any leasehold interest in real property is granted, assigned or surrendered.

3. "Instrument." Any document or writing, other than a deed or a will, regardless of where made, executed or delivered, whereby any economic interest in real property is transferred.

4. "Transaction." Any act or acts, regardless of where performed, and whether or not reduced to writing, unless evidenced by a deed or instrument, whereby any economic interest in real property is transferred, other than a transfer pursuant to the laws of intestate succession.

5. "Real property." Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, which are located in whole or in part within the city of Staten Island. It shall not include a mortgage, a release of mortgage or, for purposes of paragraph three and subparagraphs (ii) and (iii) of paragraph seven of subdivision a of section 11-2102 of this chapter, a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or

home of four or more families living independently of each other. It shall not include rights to sepulture.

6. "Economic interest in real property." The ownership of shares of stock in a corporation which owns real property; the ownership of an interest or interests in a partnership, association or other unincorporated entity which owns real property; and the ownership of a beneficial interest or interests in a trust which owns real property.

7. "Transfer" or "transferred." When used in relation to an economic interest in real property, the terms "transfer" or "transferred" shall include the transfer or transfers or issuance of shares of stock in a corporation, interest or interests in a partnership, association or other unincorporated entity, or beneficial interest in a trust, whether made by one or several persons, or in one or several related transactions, which shares of stock or interest or interests constitute a controlling interest in such corporation, partnership, association, trust or other entity.

8. "Controlling interest." In the case of a corporation, fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the total fair market value of all classes of stock of such corporation; and, in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

9. "Consideration." The price actually paid or required to be paid for the real property or economic interest therein, without deduction for mortgages, liens or encumbrances, whether or not expressed in the deed or instrument and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed.

10. "Net consideration." Any consideration, exclusive of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed.

11. "Comptroller." The comptroller of the city of Staten Island.

12. "Commissioner of finance." The commissioner of finance of the city of Staten Island.

13. "City." The city of Staten Island.

14. "Grantor." The person or persons making, executing or delivering the deed. The term "grantor" also includes the entity with an interest in real property or the person or persons who transfer an economic interest in real property.

15. "Grantee." The person or persons accepting the deed or who obtain any of the real property which is the subject of the deed or any interest therein. The term "grantee" also includes the person or persons to whom an economic interest in real property is transferred.

16. "Affixed." Includes attached or annexed by adhesion, stapling or otherwise, or a notation by stamp, imprint or writing.

17. "Register." Includes the city register and the county clerk of the county of Richmond.

18. "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.

§ 11-2102 Imposition of tax. a. A tax is hereby imposed on each deed at the time of delivery by a grantor to a grantee when the consideration

for the real property and any improvement thereon, whether or not included in the same deed, exceeds twenty-five thousand dollars. The tax shall be:

(1) at the rate of one-half of one per centum of the net consideration with respect to conveyances made before July first, nineteen hundred seventy-one, or made in performance of a contract therefor executed before such date;

(2) at the rate of one percent of such net consideration with respect to

(i) all conveyance made on or after July first, nineteen hundred seventy-one and before February first, nineteen hundred eighty-two, or made in performance of a contract therefor executed during such period;

(ii) conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two of one, two or three-family houses and individual residential condominium units, and

(iii) conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two where the consideration is less than five hundred thousand dollars, other than grants, assignments or surrenders of leasehold interests in real property taxable under paragraph three of this subdivision;

(3) at the rate of one percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two where the consideration if five hundred thousand dollars or more, provided however, that for purposes of this paragraph the amount subject to tax in the case of a grant of a leasehold interest in real property shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title;

(4) at the rate of two percent of the consideration with respect to all other conveyances made on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two, except that, for purposes of this paragraph, where the consideration includes the amount of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed, the portion of the consideration ascribable to such mortgage, lien or encumbrance shall be taxed at the rate of one percent, and only the balance of such consideration shall be taxed at the rate of two percent;

(5) at the rate of one percent of the consideration with respect to conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine of one, two or three-family houses and individual residential condominium units;

(6) at the rate of one percent of the consideration with respect to conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is less than five hundred thousand dollars, other than grants, assignments or surrenders of leasehold interests in real property taxable as hereafter provided;

(7) (i) at the rate of one percent of the consideration with respect to a grant, assignment or surrender, made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine, of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is

occupied as the residence or home of four or more families living independently of each other,

(ii) at the rate of one percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is less than five hundred thousand dollars, or

(iii) at the rate of two percent of the consideration with respect to grants, assignments or surrenders of leasehold interests in real property made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine where the consideration is five hundred thousand dollars or more;

(iv) provided, however, that for purposes of subparagraphs (i), (ii) and (iii) of this paragraph, the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title; and

(8) at the rate of two percent of the consideration with respect to all other conveyances made on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred eighty-nine;

(9) with respect to conveyances made on or after August first, nineteen hundred eighty-nine, other than grants, assignments or surrenders of leasehold interests in real property taxable as provided in paragraph ten of this subdivision, the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for conveyances of one, two or three-family houses and individual residential condominium units where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for such conveyances where the consideration is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other conveyances where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent where the consideration for such conveyances is more than five hundred thousand dollars;

(10) With respect to a grant, assignment or surrender of a leasehold interest in real property made on or after August first, nineteen hundred eighty-nine, the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for the granting, assignment or surrender of a leasehold interest in a one, two or three-family house or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration where the consideration for granting, assignment or surrender or such leasehold interest is more than five hundred thousand dollars; and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for the granting, assignment or surrender of a leasehold interest in all other real property where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent of the consideration where the consideration for the granting, assignment or surrender of such a leasehold interest is more than five hundred thousand dollars; and

(iii) provided, however, that for purposes of subparagraphs (i) and (ii) of this paragraph, the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the tax imposed by chapter seven of this title.

Where any real property is situated partly within and partly without the boundaries of the city of Staten Island the consideration and net consideration subject to tax shall be such part of the total consideration and total net consideration attributable to that portion of such real property situated within the city of Staten Island or to the interest in such portion.

b. (1) In addition to the taxes imposed by subdivision a of this section, there is hereby imposed a tax on each instrument or transaction, unless evidenced by a deed subject to tax under subdivision a of this section, at the time of the transfer, whereby any economic interest in real property is transferred by a grantor to a grantee, where the consideration exceeds twenty-five thousand dollars.

(A) With respect to such transfers made on or after July thirteenth, nineteen hundred eighty-six and before August first, nineteen hundred eighty-nine, the tax shall be (i) at the rate of one percent of the consideration where the real property the economic interest in which is transferred is a one, two or three-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other, or where the consideration for the transfer is less than five hundred thousand dollars, and (ii) at the rate of two percent of the consideration with respect to all other transfers.

(B) With respect to such transfers made on or after August first, nineteen hundred eighty-nine, the tax shall be at the following rates:

(i) at the rate of one percent of the consideration where the real property, the economic interest in which is transferred, is a one, two or three-family house, an individual cooperative apartment, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other and where the consideration for such transfer of an economic interest in such real property is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration where the consideration for such transfer of an economic interest in such property is more than five hundred thousand dollars, and

(ii) at the rate of one and four hundred twenty-five thousandths of one percent of the consideration with respect to all other transfers of an economic interest in real property where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent of the consideration where the consideration for such transfers is more than five hundred thousand dollars.

(C) Where any real property, the economic interest in which is transferred, is situated partly within and partly without the boundaries of the city of Staten Island, the consideration subject to tax shall be such part of the consideration as is attributable to that portion of such real property which is situated within the city of Staten Island.

(2) Notwithstanding the definition of "controlling interest" contained in subdivision eight of section 11-2101 of this chapter or anything to the contrary contained in subdivision seven of such section, in the case

of any transfer of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold, the tax imposed by this subdivision shall apply to (i) the original transfer of such shares of stock by the cooperative corporation or cooperative plan sponsor, and (ii) any subsequent transfer of such shares of stock by the owner thereof. Notwithstanding any provision of this chapter to the contrary, in the case of a transfer described in clause (ii) of this subparagraph which relates to an individual residential unit, the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation. In determining the tax on a transfer described in clause (i) of this subparagraph, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. Such proportionate part shall be the amount determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a fraction, the numerator of which shall be the number of shares of stock transferred in a transaction described in clause (i) of this subparagraph and the denominator of which shall be the total number of outstanding shares of stock of the cooperative housing corporation, including any stock held by the corporation. In no event, however, shall such credit reduce the tax on a transfer described in clause (i) of this subparagraph below zero, nor shall any such credit be allowed for any tax paid more than twenty-four months prior to the date on which occurs the first in a series of transfers of shares of stock in an offering of cooperative housing corporation shares described in clause (i) of this subparagraph. For purposes of this paragraph, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law.

(3) Notwithstanding the definition of "controlling interest" contained in paragraph eight of section 11-2101 of this chapter or anything to the contrary contained in paragraph seven of such section, in the case of a corporation, other than a cooperative housing corporation, partnership, association, trust or other entity formed for the purpose of cooperative ownership of real property, the tax imposed by this subdivision shall apply to each transfer of shares of stock in such corporation, interest in such partnership, association or other entity or beneficial interest in such trust, in connection with the grant or transfer of a proprietary leasehold. Notwithstanding any provision of this chapter to the contrary, in the case of a transfer described in this paragraph which relates to an individual residential unit, other than the original transfer of such a unit by the cooperative entity or cooperative plan sponsor, the consideration for such transfer shall not include any portion of the unpaid principal of any mortgage on the real property of such corporation, partnership, association, trust or other entity. Notwithstanding any other provision of law to the contrary, all revenues arising from the tax imposed pursuant to this paragraph shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

c. (1) Anything to the contrary notwithstanding, in the case of any conveyance or transfer of real property or any economic interest therein in complete or partial liquidation of a corporation, partnership, association, trust or other entity, the taxes imposed by this section shall be measured by (i) the consideration for such conveyance or transfer, or

(ii) the value of the real property or economic interest therein, whichever is greater.

(2) If, within twenty-four months following the transfer of an economic interest in real property which is subject to the tax imposed by this chapter, the corporation, partnership, association, trust or other entity owning the real property the economic interest in which was so transferred, is liquidated, and such real property is conveyed to the grantee or grantees of such economic interest, a credit shall be allowed against the tax imposed by this chapter upon such conveyance in liquidation to such grantee or grantees. The amount of such credit shall be equal to the amount of the tax paid upon the prior transfer of the economic interest in such real property, but shall in no event be greater than the tax payable upon the conveyance in liquidation.

d. In the case of a transfer of an economic interest in any entity that owns assets in addition to real property or interest therein, the consideration subject to tax shall be deemed equal to the fair market value of the real property or interest therein apportioned based on the percentage of the ownership interest in the entity transferred.

e. (1) Notwithstanding anything contained in this section, the tax imposed under subdivisions a and b of this section on any deed or other instrument or transaction conveying or transferring real property or an economic interest therein, that qualifies as a real estate investment trust transfer, as defined below, shall be imposed at a rate equal to fifty percent of the otherwise applicable rate.

(2) For purposes of this subdivision, a real estate investment trust transfer shall mean (A) any deed or other instrument or transaction conveying or transferring real property or an economic interest therein to a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code (a "REIT") or to a partnership or corporation in which a REIT owns a controlling interest immediately following the transaction; and (B) any issuance or transfer of an interest in a REIT, or in a partnership or corporation in which a REIT owns a controlling interest immediately following the issuance or transfer in connection with a transaction described in subparagraph (A) of this paragraph.

Provided, however, a transaction described in the opening paragraph of this paragraph shall not constitute a real estate investment trust transfer unless (i) it occurs in connection with the initial formation of the REIT and the conditions described in subparagraphs (C) and (D) of this paragraph are satisfied, or (ii) in the case of any real estate investment trust transfer occurring on or after July thirteenth, nineteen hundred ninety-six and before September first, two thousand twenty-six, the transaction is described in subparagraph (E) of this paragraph in which case the provision of such subparagraph shall apply.

(C) The value of the ownership interests in the REIT, or in a partnership or corporation in which the REIT owns a controlling interest, received by the grantor as consideration for such conveyance or transfer must be equal to an amount not less than forty percent of the value of the equity interest in the real property or economic interest therein conveyed or transferred by the grantor to the grantee and such ownership interests must be retained by the grantor or owners of the grantor for a period of not less than two years following the date of such conveyance or transfer; provided, however, that in the case of the death of the grantor or an owner of the grantor within such two year period, this two year retention requirement shall be deemed to be satisfied notwithstanding any conveyance or transfer of such ownership interests held by such

individual as a result of such death. The value of the equity interest in such real property or economic interest therein shall be computed by subtracting from the consideration for the conveyance or transfer of the real property or economic interest therein the unpaid balance of any loans secured by mortgages or other encumbrances which are liens on the real property or economic interest therein immediately before the conveyance or transfer. For purposes of this computation, in the case of a conveyance or transfer of real property other than a conveyance or transfer of an economic interest in real property, the amount of the unpaid balance of any loans secured by mortgages or other encumbrances to be subtracted from consideration is determined by multiplying the total unpaid balance of any loans secured by mortgages or other encumbrances on the real property by the percentage of the ownership interest in the real property being conveyed or transferred to the grantee. In the case of a transfer of an economic interest in real property, such amount to be subtracted is equal to the sum of the following amounts: (i) a reasonable apportionment to the interests in real property owned by the entity of the amount of any loans secured by encumbrances on the ownership interests in the entity which are being conveyed or transferred and (ii) the amount of any loans secured by mortgages or other encumbrances on the real property of the entity multiplied by the percentage interest in the entity which is being conveyed or transferred.

Provided, however, that for purposes of the computation made pursuant to this subparagraph, any mortgages or other encumbrances on the real property or economic interest therein which are created in contemplation of the initial formation of the REIT or in contemplation of the conveyance or transfer of such real property or economic interest therein to the REIT or to a partnership or corporation in which the REIT owns a controlling interest immediately following the conveyance or transfer shall not be considered.

(D) Seventy-five percent or more of the cash proceeds received by such REIT from the sale of ownership interests in such REIT upon its initial formation must be used: (i) to make payments on loans secured by any interest in real property, including an ownership interest in an entity owning real property, which is owned directly or indirectly by such REIT; (ii) to pay for capital improvements to real property or any interest therein owned directly or indirectly by such REIT; (iii) to pay brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease incurred in connection with the creation of a leasehold or sublease pertaining to real property or any interest therein owned directly or indirectly by such REIT; (iv) to acquire any interest in real property, including an ownership interest in any entity owning real property, apart from any acquisition to which a reduced rate of tax is applicable pursuant to this subdivision, without regard to this subparagraph; or (v) for reserves established for any of the purposes described in clause (i), (ii) or (iii) of this subparagraph. For purposes of this subparagraph, the term real property shall include real property wherever located.

(E) If a transaction otherwise described in subparagraph (A) or (B) of this paragraph occurs other than in connection with the initial formation of a REIT, the condition set forth in subparagraph (D) shall be disregarded and such transaction shall constitute a "real estate investment trust transfer" if the condition set forth in subparagraph (C)

would be satisfied if "fifty percent" is substituted for "forty percent" therein.

(3) For purposes of determining the consideration for a real estate investment trust transfer taxable under this subdivision the value of the real property or interest therein shall be equal to the estimated market value as determined by the commissioner of finance for real property tax purposes as reflected on the most recent notice of assessment issued by such commissioner, or such other value as the taxpayer may establish to the satisfaction of such commissioner.

(4) This subdivision shall only apply to real estate investment trust transfers occurring on or after the effective date of this subdivision.

f. Notwithstanding any other provision of this chapter, in determining the tax imposed by this chapter with respect to a deed, instrument or transaction conveying or transferring a one, two or three-family house, an individual residential condominium unit, an individual residential cooperative apartment, or an interest therein, the consideration for such conveyance or transfer shall exclude, to the extent otherwise included therein, the amount of any mortgage or other lien or encumbrance on the real property or interest therein that existed before the delivery of the deed or the transfer and remains thereon after the date of delivery of the deed or the transfer, other than any mortgage, lien or encumbrance placed on the property or interest in connection with, or in anticipation of, the conveyance or transfer, or by reason of deferred payments of the purchase price whether represented by notes or otherwise. Provided, however, that this subdivision shall not apply to a conveyance or transfer (1) to a mortgagee, lienor or encumbrancer, regardless of whether the grantor or transferor is or was personally liable for the indebtedness secured by the mortgage, lien or encumbrance or whether the mortgage, lien or encumbrance is canceled of record, or (2) which qualifies as a "real estate investment trust transfer" as defined in subdivision e of this section.

§ 11-2103 Presumptions and burden of proof. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds and transfers of economic interests in real property are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the value of the real property or interest therein. Such presumptions shall prevail until the contrary is established and the burden of proving the contrary shall be on the taxpayer. The burden of proving that a lien or encumbrance existed on the real property or interest therein before the delivery of the deed and remained thereon thereafter and the burden of proving the amount of such lien or encumbrance at the time of the delivery of the deed shall be on the taxpayer.

§ 11-2104 Payment. The tax imposed hereunder shall be paid by the grantor to the commissioner of finance at the office of the register in the county where the deed is or would be recorded within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed, or, in the case of a tax on the transfer of an economic interest in real property, at such place as the commissioner of finance shall designate, within thirty days after the transfer. The grantee shall also be liable for the payment of such tax in the event that the amount of tax due is not paid by the grantor or the grantor is exempt from tax. All moneys received as such payments by the register during the preceding month shall be transmitted to the commissioner of finance on the first day of each month or on such other day as is mutually agreeable to the commissioner of finance and the register. From the

moneys so received by him or her, the commissioner of finance shall set said in a special account:

(1) the total amount of taxes imposed pursuant to the provisions of paragraph three of subdivision a of section 11-2102 of this chapter including any interest or penalties thereon;

(2) fifty percent of the total amount of taxes imposed pursuant to the provisions of paragraph four of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon, provided, however, that where such tax is measured by the consideration for a conveyance without deduction for the amount of any mortgage or other lien or encumbrance on the real property or interest therein which existed before the delivery of the deed and remains thereon after the delivery of the deed, the entire amount of tax imposed at the rate of one percent on the portion of the consideration ascribable to such nondeductible mortgage, lien or other encumbrance, including any interest or penalties thereon, and fifty percent of the tax on the balance of the consideration, including fifty percent of any interest or penalties thereon, shall be set aside in such special account;

(3) fifty percent of the total amount of taxes imposed pursuant to the provisions of subparagraph (iii) of paragraph seven of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon;

(4) fifty percent of the total amount of taxes imposed pursuant to the provisions of paragraph eight of subdivision a of section 11-2102 of this chapter, including fifty percent of any interest or penalties thereon;

(5) fifty percent of the total amount of taxes imposed at the rate of two percent pursuant to the provisions of clause (ii) of subparagraph A of paragraph one of subdivision b of section 11-2102 of this chapter including fifty percent of any interest or penalties thereon;

(6) with respect to any conveyance of real property, transfer of an economic interest therein, or any grant, assignment or surrender of a leasehold interest in real property, made on or after August first, nineteen hundred eighty-nine and taxable under this chapter, in each instance where the tax rate is in excess of two percent, a portion of the tax received equal to one percent of the consideration subject to the tax plus any interest or penalty attributable to such portion of the tax; and

(7) notwithstanding anything in subdivision six of this section to the contrary, in each instance where the tax rate imposed pursuant to subdivision e of section 11-2102 of this chapter is in excess of one percent, a portion of the tax received equal to one-half of one percent of the total consideration for the real property or economic interest therein conveyed or transferred, plus any interest or penalty attributable to such portion of the tax.

Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eighty-eight-a of the state finance law, and, on the fifteenth day of each month, the commissioner of finance shall transmit all funds in such account on the last day of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he or she deems necessary for refunds and such other amounts necessary to finance the New York City transportation

disabled committee and the New York City paratransit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the account but in no event be less than one hundred seventy-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of New York and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

§ 11-2105 Returns. a. A joint return shall be filed by both the grantor and the grantee for each deed whether or not a tax is due thereon. Such return shall be filed with the commissioner of finance within thirty days after the delivery of the deed by the grantor to the grantee but before the recording of such deed. The commissioner of finance may, by rule, require that such returns be filed electronically.

Filing shall be accomplished by delivering the return to the register for transmittal to the commissioner of finance or, where required by the commissioner of finance, by electronic filing of the return in a manner designated by the commissioner of finance. In the case of a transfer of an economic interest in real property, a joint return shall be filed in the above manner by both the grantor and the grantee for each instrument or transaction by which such transfer is effected, whether or not a tax is due thereon. Such return shall be filed with the commissioner of finance, at such place and in such manner as he or she may designate within thirty days after the transfer. The commissioner of finance shall prescribe the form of the return and the information which it shall contain. The return shall be signed by both the grantor or the grantor's agent and the grantee or the grantee's agent. Where the commissioner of finance requires electronic filing, the return shall be signed electronically. Upon the filing of such return for a deed, evidence of the filing shall be affixed to the deed by the register. The commissioner of finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded. Where either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or file a separate return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party. For good cause, the commissioner of finance may waive any rule requiring electronic filing and may permit a return to be filed in such other manner as the commissioner of finance may designate.

b. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

c. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

d. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of

finance shall take the necessary steps to enforce the filing of such a return or of a corrected return.

e. Where a deed, or instrument or transaction has more than one grantor or more than one grantee, the return may be signed by any one of the grantors and by any one of the grantees, provided, however, that those not signing shall not be relieved of any liability for the tax imposed by this chapter.

f. The payment of, and the filing of returns relating to, the taxes imposed hereunder, shall be required as a condition precedent to the recording or filing of a deed, lease, assignment or surrender of lease or other instrument effecting a conveyance or transfer subject to such taxes.

g. Every cooperative housing corporation shall be required to file an information return with the commissioner of finance as follows: such information return shall be filed by February fifteenth of the year two thousand and of each year thereafter, covering the reporting period beginning on January sixth of the year preceding the filing and ending on January fifth of the year of the filing. For reporting periods beginning before January sixth, nineteen hundred ninety-nine, such information return shall be filed by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first provided, however, that for the reporting period from January first through June thirtieth, nineteen hundred eighty-nine, such information return shall be filed by July thirty-first, nineteen hundred eighty-nine. The return shall contain such information regarding the transfer of shares of stock in the cooperative housing corporation as the commissioner may deem necessary, including but not limited to, the names, addresses and employer identification numbers or social security numbers of the grantor and the grantee, the number of shares transferred, the date of the transfer and the consideration paid for such transfer, provided, however, that if such cooperative housing corporation elects that such information return be deemed an application for an abatement pursuant to paragraph (f) of subdivision three of section four hundred sixty-seven-a of the real property tax law, such return shall contain the information required pursuant to paragraph (d) of subdivision three of such section. The commissioner of finance may enter into an agreement with the commissioner of taxation and finance of the state of New York to provide that a single information return may be filed for purposes of the tax imposed by this chapter and the real estate transfer tax imposed by article thirty-one of the tax law.

h. Returns with respect to the conveyance of a one- or two-family dwelling will not be accepted for filing unless accompanied by an affidavit signed by the grantor and grantee indicating that the premises is equipped with an approved and operational smoke detecting device as provided in article six of subchapter seventeen of chapter one of title twenty-seven of this code.

i. When the grantor or grantee of a deed for a building used as residential real property containing up to four family dwelling units is a limited liability company, the joint return shall not be accepted for filing unless it is accompanied by a document which identifies the names and business addresses of all members, managers, and any other authorized persons, if any, of such limited liability company and the names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers and partners of any

limited liability company or other business entity that are to be the members, managers or authorized persons, if any, of such limited liability company. The identification of such names and addresses shall not be deemed an unwarranted invasion of personal privacy pursuant to article six of the public officers law. If any such member, manager or authorized person of the limited liability company is itself a limited liability company or other business entity other than a publicly traded entity, a REIT, an UPREIT, or a mutual fund, the names and addresses of the shareholders, directors, officers, members, managers and partners of the limited liability company or other business entity shall also be disclosed until full disclosure of ultimate ownership by natural persons is achieved. For purposes of this subdivision, the terms "members", "managers", "authorized person", "limited liability company" and "other business entity" shall have the same meaning as those terms are defined in section one hundred two of the limited liability company law.

§ 11-2106 Exemptions. a. The following shall be exempt from the payment of the tax imposed by this chapter and from filing a return:

1. The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, or political subdivisions;

2. The United States of America, and any of its agencies and instrumentalities, insofar, as they are immune from taxation, provided, however, that the exemption of such governmental bodies or persons shall not relieve a grantee from them of liability for the tax or from filing a return.

b. The tax imposed by this chapter shall not apply to any of the following deeds, instruments or transactions:

1. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to the United Nations or other world-wide international organizations of which the United States of America is a member;

2. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to any corporation, or association, or trust, or community chest, fund or foundation, organized or operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph;

3. A deed, instrument or transaction conveying or transferring real property or an economic interest therein to any governmental body or person exempt from payment of the tax pursuant to subdivision a of this section;

4. A deed delivered pursuant to a contract made prior to May first, nineteen hundred fifty-nine;

5. A deed delivered by any governmental body or person exempt from payment of the tax pursuant to subdivision a of this section as a result of a sale at a public auction held in accordance with the provisions of a contract made prior to May first, nineteen hundred fifty-nine;

6. A deed or instrument given solely as security for, or a transaction the sole purpose of which is to secure, a debt or obligation or a deed

or instrument given, or a transaction entered into, solely for the purpose of returning such security;

7. A deed, instrument or transaction conveying or transferring real property or an economic interest therein from a mere agent, dummy, straw man or conduit to his principal or a deed, instrument or transaction conveying or transferring real property or an economic interest therein from the principal to his agent, dummy, straw man or conduit.

8. A deed, instrument or transaction conveying or transferring real property or an economic interest therein that effects a mere change of identity or form of ownership or organization to the extent the beneficial ownership of such real property or economic interest therein remains the same, other than a conveyance to a cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. For purposes of this paragraph, the term "cooperative housing corporation" shall not include a housing company organized and operating pursuant to the provisions of article two, four, five or eleven of the private housing finance law.

9. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to any housing development fund company organized pursuant to article eleven of the private housing finance law or to an entity, the controlling interest of which is held by such a company, if at the time of such conveyance or transfer, such real property is subject to, or simultaneously with such conveyance or transfer is made subject to, a regulatory agreement with the state of New York, a municipal corporation or any other public corporation created by or pursuant to any law of the state of New York that: encumbers the real property for thirty years or more, requires mutual consent for revocation or amendment, restricts more than fifty percent of the floor area, other than common areas, to residential real property, and restricts at least sixty-six and two-thirds percent of such residential real property to purchase, lease, license or other use by persons of low income and families of low income within the meaning of section two of the private housing finance law; provided, however, that if such regulatory agreement restricts less than one hundred percent of the floor area, other than common areas, to purchase, lease, license or other use by persons of low income and families of low income within the meaning of section two of the private housing finance law, the tax shall apply to the consideration less the product of the consideration and a fraction, the numerator of which is the floor area that such regulatory agreement restricts to purchase, lease, license or other use by persons of low income and families of low income within the meaning of section two of the private housing finance law and the denominator of which is the entire floor area, minus the floor area of common areas; provided further, that if such real property is made subject to a regulatory agreement that meets the terms of this paragraph within two years of the conveyance or transfer then the commissioner of finance may issue a refund based on the application of this paragraph pursuant to the provisions of section 11-2108 of this chapter, treating the transfer or conveyance as if such real property were subject to such regulatory agreement as of the date of such transfer or conveyance, if, notwithstanding any other time limitation set forth in section 11-2108 of this chapter, application to the commissioner of finance for such refund is made within twelve months of the effective date of such regulatory agreement.

c. Notwithstanding any provision of this chapter to the contrary, where stock of a cooperative housing corporation and the appurtenant

proprietary leasehold are transferred to such cooperative housing corporation or a wholly owned subsidiary of such housing corporation, or to the holder of a mortgage on the real property of such cooperative housing corporation or a wholly owned subsidiary of such holder of a mortgage on the real property of such cooperative housing corporation, such cooperative housing corporation or its wholly owned subsidiary, or such mortgage holder or its wholly owned subsidiary, shall not be liable as grantee for the tax determined to be due under this chapter from the grantor in such transfer, provided that such transfer occurred pursuant to, as the result of, or in connection with an action, proceeding, or other procedure to which such cooperative housing corporation is a party, to enforce a lien, security interest or other rights on or in such stock and proprietary leasehold, including but not limited to rights under the proprietary lease. This subdivision shall apply to transfers occurring on or after June sixteenth, nineteen hundred ninety-two.

§ 11-2107 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable, including the assessed valuation of the real property or interest therein. Notice of such determination shall be given to the person liable for the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or, unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceed-

ing be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-2108 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. Such application may be made by the grantor, grantee or other person who has actually paid the tax. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and the commissioner of finance. The applicant shall be entitled to review such decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2107 of this

chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2107 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing, or on the commissioner of finance's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-2109 Reserves. In cases where the grantor or grantee has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-2110 Remedies exclusive. The remedies provided by sections 11-2107 and 11-2108 of this chapter shall be exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2107 of this chapter.

§ 11-2111 Proceedings to recover tax. a. Whenever any grantor or grantee shall fail to pay any tax, penalty or interest imposed by this chapter as herein provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such grantor or grantee subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any such tax or penalty will not be paid when due, such commissioner may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the grantor, grantee or other person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon

such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he or she shall be entitled to the same fees, which such sheriff may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-2112 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any person; and to afford returns, reports and other information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions under this section to a deputy commissioner of finance or any employee or employees of the department of finance;

5. To prescribe the methods for determining the consideration and net consideration attributable to that portion of real property located partly within and partly without the city of Staten Island which is located within the city of Staten Island or any interest therein;

6. To require any grantor or grantee to keep such records, and for such length of time as may be required for the proper administration of this chapter and to furnish such records to the commissioner of finance upon request;

7. To assess, determine, revise and adjust the taxes imposed under this chapter.

§ 11-2113 Administration of oaths and compelling testimony. a. The commissioner of finance, his or her employees or agents duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or of the tax appeals tribunal under this chapter and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before such commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as herein otherwise provided. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-2114 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less

than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-2107 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two of this subdivision. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations hereunder, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the

internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner to the effect that a tax has not been paid or that information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(i) Failure to file information return. If a cooperative housing corporation fails to file an information return required under subdivision g of section 11-2105 of this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed on such cooperative housing corporation a penalty of one hundred dollars for each such failure.

§ 11-2115 Returns to be secret. a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, register or tax appeals tribunal or any officer or employee of the department of finance, register or tax appeals tribunal to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed to prohibit the delivery to a grantor or grantee of a deed or to any subsequent owner of the real property conveyed by such deed or to the duly authorized representative of any of them of a certified copy of any return filed in connection with the tax on such deed; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto to

the United States of America or any department thereof, the state of New York or any department thereof, the city of Staten Island or any department thereof provided the same is required for official business; nor to prohibit the inspection for official business of such returns by the register, the corporation counsel or other legal representatives of the city or by the district attorney of Richmond county; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

e. This section shall not apply to any information contained in or relating to a return filed on or after the first day of January, two thousand three with respect to a transaction or transfer occurring on or after that date; provided, however, that this section shall continue to apply to any social security account number contained in any report or return pursuant to this chapter.

§ 11-2116 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter in any application made by him or her, or in any deed or instrument which is the subject of the notice, or, if no return has been filed or application made or address stated in the deed or instrument, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided,

however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed in this section for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. Except as otherwise provided in this subdivision, if any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which the provisions of the preceding sentence with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal. Any return filed electronically shall be deemed to be filed on the date of issuance by the commissioner of finance of a confirmation.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes

of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-2117 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter ninety-three of the laws of nineteen hundred sixty-five, as amended.

§ 11-2118 Disposition of revenues. Except as otherwise provided, all revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city. Except as otherwise provided, no part of such revenues may be expended unless appropriated in the annual budget of the city.

§ 11-2119 Foreclosure proceedings. Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating the transfer shall not be liable for any interest or penalties authorized by this chapter or chapter forty of this title.

## CHAPTER 22
## TAX ON OWNERS OF MOTOR VEHICLES

§ 11-2201 Definitions. When used in this chapter, the following terms shall mean and include:

1. "City". The city of Staten Island.
2. "Commissioner of finance". The commissioner of finance of the city.

3. "Highway". The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

4. "Individual resident". One or more natural persons other than a firm, copartnership, trustee or trustees conducting a business or association who, or one of whom, owns a motor vehicle registered or required to be registered pursuant to section four hundred one of the vehicle and traffic law, the registration fees for which are provided for by subdivision six of such section, who, at the time he or she makes application for registration or renewal thereof of such motor vehicle, or such application is made on his or her behalf: (a) is domiciled in the city, unless he or she maintains no permanent place of abode in the city, maintains a permanent place of abode elsewhere, and during the period of one year next preceding the date upon which such application is made, spent in the aggregate not more than thirty days in the city; or (b) is not domiciled in the city but maintains a permanent place of abode in the city and, during the period of one year next preceding the date upon which such application is made, spent in the aggregate more than one hundred eighty-three days in the city, unless such individual is in the armed forces of the United States.

5. "Motor vehicle". Every vehicle, except electrically-driven invalid chairs being operated or driven by an invalid, operated or driven upon a public highway by any power, other than muscular power, which includes electric power obtained from overhead trolley wires, except vehicles which run only upon rails or tracks.

6. "Other resident". Every firm, copartnership, trustee or trustees conducting a business or association or a corporation, who or which regularly keeps, stores, garages or maintains within the city a motor vehicle owned by it which, at the time it makes application for registration or renewal of registration thereof, is registered or required to be registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law.

7. "Person". Unless otherwise indicated, 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 other form of unincorporated enterprise.

8. "Owner". A person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person.

9. "Vehicle". Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

10. "Leased or rented passenger motor vehicles". Any motor vehicle owned by any person engaged in the business of renting or leasing motor vehicles to be operated on the public highways for carrying passengers registered or required to be registered pursuant to any provision of section four hundred one of the vehicle and traffic law, which vehicle at the time when application is made for registration, re-registration or renewal thereof is regularly kept, stored, garaged or maintained in the city, including such vehicles which have been rented and leased by the owner and are in possession of lessees when such application for registration, re-registration or renewal is made.

11. "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.

§ 11-2202 Imposition of tax. Notwithstanding the provisions of section four hundred of the vehicle and traffic law and of subdivision ten of section four hundred one of the vehicle and traffic law to the contrary, a tax of fifteen dollars per annum is hereby imposed:

1. With respect to each motor vehicle registered or required to be registered pursuant to subdivision six of section four hundred one of the vehicle and traffic law:

a. Upon each individual resident for each such motor vehicle registered or for which registration is renewed, or required to be registered or renewed by him or her; and

b. Upon each other resident of each such motor vehicle regularly kept, stored, garaged or maintained in the city and registered or required to be registered or renewed by such other resident; and

2. With respect to each leased or rented passenger motor vehicle, upon the owner thereof.

§ 11-2203 Exemptions. The tax imposed by this chapter shall not be imposed upon:

(1) owners of motor vehicles, the registration fees for which are or may be prescribed, governed or established by subdivisions seven, except for leased or rented passenger vehicles, eight, twelve, thirteen, sixteen of section four hundred one, articles fifteen and sixteen, or section four hundred twenty of the vehicle and traffic law;

(2) any owner to whom the provisions of the vehicle and traffic law relative to registration and equipment of motor vehicles are made inapplicable by the provisions of article three of such law, for the period of such inapplicability;

(3) the state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, or political subdivision;

(4) the United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation;

(5) the United Nations or other international organizations of which the United States of America is a member;

(6) any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

§ 11-2204 Payment of tax and evidence of tax payment. Every owner of a motor vehicle subject to tax under this chapter shall pay the tax thereon to the commissioner of motor vehicles of the state of New York on or before the date upon which he or she registers or renews his or her registration thereof or is required to register or renew his or her registration thereof pursuant to section four hundred one of the vehicle and traffic law.

Notwithstanding the provisions of section four hundred of the vehicle and traffic law to the contrary, the payment of such tax shall be a condition precedent to the registration or renewal thereof of such motor vehicle and to the issuance of any certificate of registration and plates or removable tag specified in subdivision three of section four hundred one and in sections four hundred three and four hundred four of the vehicle and traffic law, and no such certificate of registration, plates or tag shall be issued unless such tax has been paid. The commissioner of motor vehicles shall not issue a registration certificate for any motor vehicle for which the registrant's address is within any such city, except upon proof, in a form approved by the commissioner of motor vehicles, that such tax has been paid, or is not due, with respect to such motor vehicle. The commissioner of motor vehicles, upon the payment of such tax or upon the application of any person exempt therefrom, shall furnish to each taxpayer paying the tax a receipt for such tax and to each such taxpayer or exempt person a statement, document or other form approved by the commissioner of motor vehicles, showing that such tax has been paid or is not due, with respect to such motor vehicle.

§ 11-2205 Returns. a. At the time the payment of the tax imposed by this chapter becomes due, every person subject to tax under this chapter shall file a return with the commissioner of motor vehicles in form and containing such information as may be prescribed by such commissioner of motor vehicles. The taxpayer's application for registration or the renewal of registration shall constitute the return required under this chapter, unless the commissioner of motor vehicles, by regulation, shall otherwise provide.

b. Returns shall be preserved for three years and thereafter until the commissioner of motor vehicles permits them to be destroyed.

c. The commissioner of motor vehicles may require amended returns or certificates of facts to be filed within twenty days after notice and to contain the information specified in the notice. Any such certificate shall be deemed to be part of the return required to be filed.

d. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of motor vehicles or the commissioner of finance if designated as his or her agent shall take the necessary steps to enforce the filing of such a return or of a corrected return.

§ 11-2206 Determination of tax. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, or if a tax or any part thereof due pursuant to this chapter be not paid when required, the amount of tax due shall be determined by the commissioner of motor vehicles or by the commissioner of finance if designated as his or her agent, from such information as may be obtainable, including motor vehicle registration with the department of motor vehicles of the state of New York or other factors. Notice of such determination shall be given to the person liable for the tax. Such a determination by the commissioner of motor vehicles shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, shall apply to the commissioner of motor vehicles for a hearing, or unless such commissioner of his or her own motion shall redetermine the same. If the commissioner of finance is designated as the agent of the commissioner of motor vehicles, such a determination by the commissioner of finance shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of such determi-

nation, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) applies to the tax appeals tribunal for a hearing by filing a petition, or unless the commissioner of finance of his or her own motion shall redetermine the same. A hearing following a petition to the tax appeals tribunal and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing by the commissioner of motor vehicles or the tax appeals tribunal, the commissioner of motor vehicles, if he or she holds the hearing, or the tax appeals tribunal if the tax appeals tribunal holds the hearing, shall give notice of the determination or decision to the person against whom the tax is assessed and in the case of a tax appeals tribunal decision, to the commissioner of finance. Such determination by the commissioner of motor vehicles, or a decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such determination or tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a taxpayer unless (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of motor vehicles and there shall be filed with the commissioner of motor vehicles an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of the taxpayer such undertaking filed with the commissioner of motor vehicles may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such determination or decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-2207 Refunds for certain unused registrations. Whenever any fee or portion of a fee paid for the registration of a motor vehicle under the provisions of the vehicle and traffic law is refunded pursuant to the provisions of subdivision one of section four hundred twenty-eight of the vehicle and traffic law, the amount of any tax paid pursuant to this chapter upon such registration shall also be refunded by the commissioner.

§ 11-2208 Refunds. a. In the manner provided in this section the commissioner of motor vehicles shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitu-

tionally collected or paid if application for such refund shall be made within one year from the payment thereof to the commissioner of motor vehicles or to the commissioner of finance if designated as his or her agent. Whenever a refund is made or denied, the reasons therefor shall be stated in writing by the commissioner of motor vehicles or by the commissioner of finance, as the case may be, who in lieu of any refund, may allow credit therefor on payments due from the applicant.

b. (1) If the commissioner of motor vehicles has not designated the commissioner of finance as his or her agent, application for a refund or credit made as provided under this section shall be deemed an application for a revision of any tax, penalty or interest complained of and the commissioner of motor vehicles shall hold a hearing and receive evidence with respect thereto. After such hearing, the commissioner of motor vehicles shall give notice of the determination of such application to the applicant who shall be entitled to review such determination by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of notice of such determination, and provided that a final determination of tax due was not previously made. Such a proceeding shall not be instituted unless an undertaking is filed with the commissioner of motor vehicles in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(2) If the commissioner of motor vehicles has designated the commissioner of finance as his or her agent, a determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as provided under this section, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner of motor vehicles, in such amount and

with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which has been determined to be due pursuant to the provisions of section 11-2206 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in such section, or has failed to avail himself or herself of the remedies provided in such section. No refund or credit shall be made of a tax, interest or penalty paid after a determination made pursuant to section 11-2206 of this chapter, unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper after a hearing, or on his or her own motion, by the commissioner of motor vehicles or after a hearing by the tax appeals tribunal, or on his or her own motion by the commissioner of finance, as the case may be, or in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-2209 Reserves. In cases where a taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such taxpayer on his or her application for refund, the commissioner of motor vehicles shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-2210 Remedies exclusive. The remedies provided by sections 11-2206 and 11-2208 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of motor vehicles or by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a final determination by the commissioner of motor vehicles or a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of motor vehicles prior to the institution of such suit and posts a bond for costs as provided in section 11-2206 of this chapter.

§ 11-2211 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax, penalty or interest imposed by this chapter, the corporation counsel, upon the request of the commissioner of motor vehicles or of the commissioner of finance if designated as his or her agent, shall bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state of the United States. However, if in his or her discretion the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, believes that any such person subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which the tax or penalty might be satisfied, and that any

such tax or penalty will not be paid when due, he or she may declare such tax or penalty to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the person liable for the tax which may be found within the city, for the payment of the amount thereof, with any penalty and interest, and the cost of executing the warrant, and to return such warrant to the person who issued it and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and the interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant such sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of motor vehicles, or of the commissioner of finance if designated as his or her agent, a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance of the city, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of motor vehicles or the commissioner of finance, as the case may be, may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if he or she had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-2212 General powers of the commissioner of motor vehicles. In addition to the powers granted to the commissioner of motor vehicles in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. For cause shown, to remit penalties; and to compromise disputed claims in connection with the taxes imposed under this chapter;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles of any other state or the treasury department of the United

States, or any city or county of the state of New York; and to afford such information to such other state, treasury department, city or county, any provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions under this section to a deputy commissioner in the department of motor vehicles or any employee or employees of his or her department or to any county clerk or other officer who acts as the agent of such commissioner in the registration of motor vehicles;

5. To prescribe methods for determining the tax;

6. To require all persons owning motor vehicles subject to tax to keep such records as he or she may prescribe and to furnish such information upon his or her request;

7. To request the police department of the city to assist in the enforcement of the provisions of this chapter.

§ 11-2213 Administration of oaths and compelling testimony. a. The commissioner of motor vehicles or his or her employees or agents duly designated and authorized by such commissioner, and the tax appeals tribunal, shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of the powers and duties under this chapter. The commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent or the tax appeals tribunal, shall have the power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner of motor vehicles, the commissioner of finance or the tax appeals tribunal pursuant to this chapter and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before him or her or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers and documents called for by the subpoena of the commissioner of motor vehicles, or, if the commissioner of finance is designated as his or her agent under this chapter, of the commissioner of finance and the tax appeals tribunal.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, or the tax appeals tribunal if the commissioner of finance is designated as the agent of the commissioner of motor vehicles, and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided in this section. Such officers shall be the city sheriff and his or her duly appointed deputies, or any officers or employees of the department of motor vehicles designated by the commissioner of motor vehicles to serve such process or any officers or employees of the department of finance of the city designated by the commissioner of finance to serve such process or any officers or employees of the tax appeals tribunal designated to serve such process.

§ 11-2214 Penalties and interest. a. Any person failing to file a return or to pay any tax or any portion thereof within the time required

by this chapter shall be subject to a penalty of five times the amount of the tax due, plus interest of five percent of such tax for each month of delay or fraction thereof, but the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, if satisfied that the delay was excusable, may remit all or any part of such penalty, but not interest at the rate of six percent per year. Penalties and interest shall be paid and disposed of in the same manner as other revenues under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

b. The certificate of the commissioner of motor vehicles or of the commissioner of finance if designated as his or her agent to the effect that a tax has not been paid, or that a return required by this chapter has not been filed, or that information has not been supplied pursuant to the provisions of this chapter shall be presumptive evidence thereof.

c. Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-2215 Returns to be secret. a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of motor vehicles, any officer or employee of the department of motor vehicles, the commissioner of finance, any officer or employee of the department of finance, the tax appeals tribunal, any commissioner or employee of such tribunal, any agent of the commissioner of motor vehicles, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or portion of any return is furnished, or to whom any information contained in any return is furnished to divulge or make known in any manner any information contained in or relating to any return provided for by this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of motor vehicles or the commissioner of finance in an action or proceeding under the provisions of this chapter, or on behalf of any party to an action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. The commissioner of motor vehicles may, nevertheless, publish a copy or a summary of any determination or decision rendered after a formal hearing held pursuant to section 11-2206 or 11-2208 of this chapter. Nothing under this section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a certified copy of any return filed by him or her pursuant to this chapter, or of the receipt, document or other form issued pursuant to section 11-2204 of this chapter, or a duplicate copy thereof; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, the state of New York or any department thereof, the city of Staten Island or any department thereof provided the same is required for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of Richmond county; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or items thereof.

b. (1) Any officer or employee of the state of New York or the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office in the state of New York or this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tax appeals tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tax appeals tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-2216 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter, in any application made by him or her, or in any application for registration made by him or her pursuant to section four hundred one of the vehicle and traffic law or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the commissioner of motor vehicles, or the commissioner of finance if designated as his or her agent, to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed under this section for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this title is, after such period or such date,

delivered by United States mail to the commissioner of motor vehicles, commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of motor vehicles, commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of motor vehicles, commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of motor vehicles is authorized to provide by regulation the extent to which, such provisions with respect to prima facie evidence of delivery and the postmark date, shall apply to certified mail. This subdivision shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by regulation of the commissioner of motor vehicles.

e. When the last day prescribed under authority of this title, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state of New York, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

§ 11-2217 Commissioner of finance as agent. The commissioner of motor vehicles is hereby authorized to designate the commissioner of finance as his or her agent to exercise any or all of his or her functions and powers specified or provided for in subdivision (d) of section 11-2205 and in sections 11-2206, 11-2208, 11-2211, 11-2213, 11-2214 and 11-2216 of this chapter. Where the commissioner of finance has been so designated as agent, the commissioner of finance, in addition to the powers elsewhere granted to him or her in this chapter, is hereby authorized and empowered:

1. To delegate such functions and powers to a commissioner or deputy commissioner in the department of finance or to any employee or employees of the department of finance;

2. For cause shown, to remit penalties and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information concerning motor vehicles and persons subject to the provisions of this chapter from the department of motor vehicles of any other state or the treasury department of the United States, or any city or county of the state of New York; and to afford such information to such other state, treasury department, city or county, any provision of this chapter to the contrary notwithstanding;

4. To request the police department of the city to assist in the enforcement of the provisions of this chapter.

§ 11-2218 Agreement between commissioner of finance and commissioner of motor vehicles. The commissioner of finance is hereby authorized and empowered to enter into an agreement with the commissioner of motor vehicles to govern the administration and collection of the taxes

imposed by this chapter, which agreement shall provide for the exclusive method of collection of such taxes, custody and remittal of the proceeds of such tax; for the payment by the city of the reasonable expenses incurred by the department of motor vehicles in collecting and administering such tax; and for the audit, upon request of the commissioner of finance or his or her delegate, of the accuracy of the payments, distributions and remittances to the commissioner of finance pursuant to the provisions of this chapter, to be conducted at a time agreed upon by the state comptroller and to be allowed not more frequently than once in each calendar year. Such agreement shall have the force and effect of a rule or regulation of the commissioner of motor vehicles, and shall be filed and published in accordance with any statutory requirements relating thereto.

§ 11-2219 Notification to corporation counsel. The commissioner of motor vehicles shall promptly notify the corporation counsel of the city of any litigation instituted against him or her which challenges the constitutionality or validity of any provision of this chapter, or of the enabling act pursuant to which it was adopted, or which attempts to limit or question the applicability of either such law, and such notification shall include a copy of the papers served upon him or her.

§ 11-2220 Construction and enforcement. This chapter shall be construed and enforced in conformity with subdivisions (g) and (h) of section twelve hundred one of the tax law, pursuant to which it is enacted.

§ 11-2221 Disposition of revenues. All revenues resulting from the imposition of the tax under this chapter shall be paid into the treasury of the city and shall be credited to and deposited in the general fund of the city, but no part of such revenues may be expended unless appropriated in the annual budget of the city.

## CHAPTER 23-A
## ENHANCED 911 TELEPHONE SURCHARGE

§ 11-2321 Short title. This chapter shall be known and may be cited as the "enhanced 911 telephone surcharge act."

§ 11-2322 Definitions. When used in this chapter the following terms shall mean:

(a) "E911 system" means an enhanced emergency telephone service which automatically connects a person dialing the digits 9-1-1 to the answering point established within the city of Staten Island police department, and which shall include, but not be limited to, selective routing, automatic number identification and automatic location identification.

(b) "Lifeline" means a discounted or low-priced telephone service available to eligible low-income residential customers.

(c) "Access line" means a communications circuit that connects a customer location to a facility housing the switching system and related equipment that provides telephone service.

(d) "911 service area" means the area within the geographic boundaries of the city of Staten Island.

(e) "Municipality" means any New York city agency, or any public benefit corporation, local development corporation or other governmental entity the majority of whose members or governing body is appointed by a city official.

(f) "Public safety agency" means a public safety agency as defined in subdivision five of section three hundred one of the county law.

(g) "Service supplier" means a service supplier as defined in subdivision seven of section three hundred one of the county law that provides service within the 911 service area.

(h) "System costs" means the costs associated with obtaining and maintaining the telecommunication equipment, all operations and maintenance costs and the telephone services costs necessary to establish and provide an E911 system.

(i) "Voice over internet protocol service" or "VOIP service" shall mean any service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires internet protocol compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

§ 11-2323 Establishment of surcharge for E911 system. (a) In accordance with the provisions of article six of the county law, as amended, there is hereby established a surcharge of one dollar per telephone access line, or equivalent, per month on the customers of every service supplier within the city of New York.

(b) The surcharge imposed by subdivision (a) of this section shall be used to pay for the costs associated with obtaining, operating and maintaining the telecommunication equipment and telephone services needed to provide an enhanced 911 emergency telephone system to serve the city of New York.

(c) All service suppliers that provide local access service within the 911 service area in the city of New York shall begin to add the monthly surcharge of one dollar per telephone access line per month as provided in subdivision (a) of this section to all service bills no later than the forty-fifth day after the effective date of the local law that increased such surcharge to one dollar per telephone access line per month. Notwithstanding the provisions of this subdivision, all providers of voice over internet protocol service that provide such service within the 911 service area shall begin to add the monthly surcharge of one dollar per telephone access line, or equivalent, per month as provided in subdivision (a) of this section to all service bills no later than September fifth, two thousand ten.

§ 11-2324 Application; limitations; exemptions. (a) The surcharge established pursuant to the provisions of section 11-2323 of this chapter shall be imposed on a per access line basis on all current bills rendered for local exchange access service within the 911 service area.

(b) No such surcharge shall be imposed upon:

(1) more than seventy-five exchange access lines per customer per location;

(2) any lifeline customers of a local telephone service supplier; or

(3) a public safety agency; or

(4) any municipality, as defined in subdivision (e) of section 11-2322 of this chapter.

§ 11-2325 Collection of surcharge. (a) The appropriate service supplier or suppliers serving the city of Staten Island 911 service area shall act as collection agents for the city and shall remit the funds collected as the surcharge to the commissioner of finance each month. Such funds shall be remitted no later than thirty days after the last business day of such period.

(b) The service supplier shall be entitled to retain as an administrative fee an amount equal to two per cent of its collections of the surcharge.

(c) The surcharge required to be collected by the service supplier shall be added to and stated separately in its billings to the customer.

(d) The service supplier shall annually provide to the commissioner of finance an accounting of the surcharge amounts billed and collected.

§ 11-2326 Liability for surcharge. (a) Each service supplier who is subject to the provisions of this chapter shall be liable to the city for the surcharge until it has been paid to the city, except that payment to a service supplier is sufficient to relieve the customer from further liability for such surcharge.

(b) The service supplier customer shall have no obligation to take any legal action to enforce the collection of any surcharge. However, whenever the service supplier remits the funds collected as the surcharge to the city, it shall also provide the city with the name and address of any customer refusing or failing to pay the surcharge imposed by this chapter and shall state the amount of such surcharge remaining unpaid.

§ 11-2327 System revenues; adjustment of surcharge. (a) All surcharge monies remitted to the commissioner of finance by a service supplier and all other monies dedicated to the payment of system costs from whatever source derived or received by the city of Staten Island shall be expended only upon authorization of the council, and only for payment of system costs as permitted by this chapter. The finance commissioner and the director of the office of management and budget shall separately account for and keep adequate records of the amount and source of all such revenues and of the amount and object or purpose of all expenditures thereof.

(b) If at the end of any fiscal year the total amount of all such revenues exceeds the amount necessary for payment of system costs in such fiscal year, such excess shall be reserved and carried over for the payment of system costs in the following fiscal year. However, if at the end of any fiscal year in conformance with applicable law, such E911 reserved fund balance exceeds an amount equal to five per cent of that necessary for the payment of system costs in such fiscal year, the council shall by local law reduce the surcharge for the following fiscal year to a level that more adequately reflects the system cost requirements of its E911 system. The council may also reestablish or increase such surcharge, subject to the provisions of section three hundred three of the county law, if the revenues generated by such surcharge and by any other source are not adequate to pay for system costs.

## CHAPTER 23-B
## WIRELESS COMMUNICATIONS SERVICE SURCHARGE

§ 11-2341 Short title. This chapter shall be known and may be cited as the "wireless communications service surcharge act."

§ 11-2342 Definitions. (a) "Wireless communications device" means any equipment used to access a wireless communications service.

(b) "Wireless communications service" means all commercial mobile services, as that term is defined in subdivision (d) of section three hundred thirty-two of title forty-seven of the United States Code, as amended from time to time, including, but not limited to, all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent-wide area specialized mobile radio licensees, which offer real time, two-way voice or data service that is interconnected with the public switched telephone network or otherwise provides access to emergency communications services.

(c) "Wireless communications service supplier" means any commercial entity that operates a wireless communications service.

(d) "Place of primary use" means the street address that is representative of where the customer's use of the wireless communications service primarily occurs, which address must be either the residential street address or the primary business street address of the customer; and within the licensed service area of the wireless communications service provider.

§ 11-2343 Establishment of surcharge for wireless communications devices. (a) In accordance with the provisions of article six of the county law, as amended, there is hereby established a surcharge of thirty cents per month on wireless communications service in the city of New York. The surcharge shall be imposed on each wireless communications device and shall be reflected and made payable on bills rendered for wireless communications service that is provided to a customer whose place of primary use is within the city of New York.

(b) The surcharge imposed by subdivision (a) of this section shall be used to pay for the costs associated with the design, construction, operation, maintenance, and administration of public safety communications networks serving the city of New York.

(c) All wireless communications service suppliers that provide service to customers whose place of primary use is within the city of New York shall begin to add the monthly surcharge as provided in subdivision (a) of this section to all service bills no later than the forty-fifth day after the effective date of the local law that added this chapter.

(d) Notwithstanding any provision of law to the contrary, no surcharge shall be imposed pursuant to this chapter on or after December first, two thousand seventeen.

§ 11-2344 Collection of surcharge. (a) Each wireless communications service supplier serving the city of New York shall act as collection agent for the city of Staten Island and shall remit the funds collected pursuant to the surcharge imposed under the provisions of this chapter to the commissioner of finance each month. Such funds shall be remitted no later than thirty days after the last business day of the month.

(b) Each wireless communications service supplier shall be entitled to retain, as an administrative fee, an amount equal to two per cent of its collections of the surcharge.

(c) The surcharge required to be collected by the wireless communications service supplier shall be added to and stated separately in its billings to customers.

(d) Each wireless communications service supplier shall annually provide to the city of Staten Island an accounting of the surcharge amounts billed and collected.

§ 11-2345 Liability for surcharge. (a) Each wireless communications service customer who is subject to the provisions of this chapter shall be liable to the city of Staten Island for the surcharge until it has been paid to the city except that payment to a wireless communications service supplier is sufficient to relieve the customer from further liability for such surcharge.

(b) No wireless communications service supplier shall have a legal obligation to enforce the collection of any surcharge imposed under the provisions of this chapter, provided, however, that whenever the wireless communications service supplier remits the funds collected to the city of Staten Island, it shall also provide the city with the name and address of any customer refusing or failing to pay the surcharge and shall state the amount of such surcharge remaining unpaid.

§ 11-2346 Systems revenues; adjustment of surcharge. (a) All surcharge monies remitted to the city of Staten Island by a wireless communi-

cations service supplier shall be expended only upon authorization of the council and only for payment of system costs or other costs associated with the design, construction, operation, maintenance, and administration of public safety communications networks serving the city of Staten Island. The finance commissioner and the director of the office of management and budget shall separately account for and keep adequate books and records of the amount and source of all such monies and of the amount and object or purpose of all expenditures thereof.

(b) If, at the end of any fiscal year, the total amount of all such monies exceeds the amount necessary for payment of the above mentioned costs in such fiscal year, such excess shall be reserved and carried over for the payment of those costs in the following fiscal year.

## CHAPTER 23-C
## WIRELESS COMMUNICATIONS SURCHARGE

§ 11-2351 Surcharge on wireless communications service. (a) There is hereby imposed within the territorial limits of the city of Staten Island, in accordance with the provisions of section one hundred eighty-six-g of the tax law, a surcharge on wireless communications service, as such surcharge is described in paragraph (b) of subdivision two of section one hundred eighty-six-g of the tax law.

(b) Such surcharge shall be imposed at the rate of thirty cents per month on each wireless communications device in service during any part of the month.

(c) A wireless communications service supplier shall begin to add such surcharge to the billings of its customers on December first, two thousand seventeen.

§ 11-2352 Surcharge on the retail sale of each prepaid wireless communications service. (a) There is hereby imposed within the territorial limits of the city of Staten Island, in accordance with the provisions of section one hundred eighty-six-g of the tax law, a surcharge on prepaid wireless communications service, as such surcharge is described in paragraph (c) of subdivision two of section one hundred eighty-six-g of the tax law.

(b) Such surcharge shall be imposed at the rate of thirty cents per retail sale.

(c) A prepaid wireless communications seller shall begin to collect such surcharge from its customers on December first, two thousand seventeen.

## CHAPTER 24
## TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

§ 11-2401 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, 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.

2. "Retail licensee." Any person to whom a license has been issued by the state liquor authority under the state alcoholic beverage control law who sells at retail in the city, for on or off premises consumption, any liquor, wine or beer for the sale of which such license is required.

3. "Return." Any return required to be filed as provided under this chapter.

4. "State." The state of New York.

5. "City." The city of Staten Island.

6. "Commissioner." The commissioner of finance of the city of Staten Island.

7. "Tax year." June first of any calendar year through May thirty-first of the following calendar year.

8. "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.

§ 11-2402 Imposition of tax. For the privilege of selling liquor, wine or beer at retail, for on or off premises consumption, within the city of Staten Island, there is hereby imposed and there shall be paid annually for each tax year, commencing with the tax year beginning June first, nineteen hundred eighty, a tax to be paid by each retail licensee in an amount equal to twenty-five percent of the license fees payable under the state alcoholic beverage control law by such retail licensee for the license year in effect at the commencement of the tax year under this chapter. A retail licensee who obtains a license subsequent to the commencement of a tax year shall pay the tax based upon fees payable under the state alcoholic beverage control law by such licensee for the license year in effect at the time such license is issued. This tax shall be in addition to any and all other taxes paid by such retail licensee.

§ 11-2403 Exemptions. The tax imposed by this chapter shall not apply to the following:

(a) The state of New York, or any of its agencies, instrumentalities, public corporations, including a public corporation created pursuant to agreement or compact with another state or Canada, or political subdivisions;

(b) The United States of America, and any of its agencies and instrumentalities insofar as it is immune from taxation;

(c) The United Nations or other international organizations of which the United States of America is a member; and

(d) Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

§ 11-2404 Records to be kept. Every retail licensee shall keep such records of its business and in such form as the commissioner may by regulation require. Such records shall be offered for inspection and examination at any time upon demand by the commissioner or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner may consent to their destruction within that period or may require that they be kept longer.

§ 11-2405 Returns. a. On or before the twenty-fifth day of June in each tax year, every person subject to tax under this chapter shall file a return with the commissioner on a form prescribed by the commissioner.

A retail licensee who obtains a license subsequent to the commencement of a tax year shall file a return for such tax year on or before the twenty-fifth day of the month following the month in which such license was obtained.

b. The return shall state the amount of license fees paid to the state under the alcoholic beverage control law and the date when a license under such law was issued to the retail licensee and shall contain any other information which the commissioner may deem necessary for the proper administration of this chapter. The commissioner may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face, the commissioner shall take the necessary steps to enforce the filing of such a return or of a corrected return.

d. The return otherwise required to be filed on or before June twenty-fifth, nineteen hundred eighty under the provisions of subdivision a of this section, shall be made and filed on or before August twenty-fifth, nineteen hundred eighty.

§ 11-2406 Payment of tax. At the time of filing a return each person shall pay to the commissioner the tax imposed under this chapter. Such tax shall be due and payable on the last day on which such return is required to be filed, regardless of whether a return is filed or whether the return which is filed correctly indicates the amount of tax due.

§ 11-2407 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the commissioner shall determine the amount of tax due from such information as may be obtainable and, if necessary, may estimate the tax on the basis of external indices. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed and to the commissioner of finance. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules

shall not be instituted by a taxpayer unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner and there shall be filed with the commissioner an undertaking issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer will pay all costs and charges which may accrue in the prosecution of the proceedings or (b) at the option of the taxpayer, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such decision, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the taxpayer shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

§ 11-2408 Refunds. a. In the manner provided in this section, the commissioner shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid, if written application to the commissioner for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied, the commissioner shall state his or her reason therefor and give notice thereof to the taxpayer in writing. The commissioner may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit made as provided in this section shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to institute a proceeding pursuant to article seventy-eight of the civil practice law and rules to review a decision of the tax appeals tribunal sitting en banc if application to the supreme court be made therefor within four months after the giving of notice of such decision, and provided, in the case of an application by a taxpayer, that a final determination of tax due was not previously made. Such a proceeding shall not be instituted by a taxpayer unless an undertaking shall first be filed with the commissioner, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, the taxpayer

will pay all costs and charges which may accrue in the prosecution of the proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section, of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2407 of this chapter where such person has had a hearing or an opportunity for a hearing, as provided in such section or has failed to avail himself or herself of the remedies as provided in such section. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner made pursuant to section 11-2407 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-2409 Remedies exclusive. The remedies provided by this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if such taxpayer institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner prior to the institution of such suit and posts a bond for costs as provided in section 11-2407 of this chapter.

§ 11-2410 Reserves. In cases where the taxpayer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such taxpayer on his or her application for refund, the city comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-2411 Proceedings to recover tax. a. Whenever any person shall fail to pay any tax or penalty or interest imposed by this chapter, the corporation counsel shall, upon the request of the commissioner, bring or cause to be brought an action to enforce payment of the same against the person liable for the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner in his or her discretion believes that a taxpayer subject to the provisions of this chapter is about to cease business, leave the state or remove or dissipate the assets out of which tax or penalties or interest might be satisfied and that any such tax or penalty or interest will not be paid when due, he or she may declare such tax or penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commission may issue a warrant, directed to the city sheriff, commanding such sheriff to levy upon and sell the real and personal property of such person which may be found within the city, for the payment of the amount thereof, with any

penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay to him or her the money collected by virtue thereof within sixty days after receipt of such warrant. The city sheriff shall, within five days after the receipt of the warrant, file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant such sheriff shall be entitled to the same fees which he or she may collect in the same manner. In the discretion of the commissioner a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he or she shall be entitled to no fee for compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the commissioner by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner as required by the opening paragraph of this subdivision, or whenever the commissioner shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the

payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-2412 General powers of the commissioner. In addition to all other powers granted to the commissioner in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof; and to prescribe the form of blanks, reports and other records relating to the enforcement and administration of this chapter;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the department of taxation and finance of the state of New York or the state liquor authority or the officials of any political subdivision of this state or the treasury department of the United States relative to any person; and to afford information to such department of taxation and finance, liquor authority, officials or treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions under this section to a deputy or assistant or other employee or employees of his or her department;

5. To assess, reassess, determine, revise and readjust the taxes imposed under this chapter;

6. To provide by regulation for granting a refund of an appropriate portion of the tax where the retail licensee ceases to do business during the course of the tax year under circumstances which result in, or would entitle such licensee to, a refund of license fee by the state liquor authority. The provisions of section 11-2408 of this chapter shall be applicable to such refunds.

§ 11-2413 Administration of oaths and compelling testimony. a. The commissioner, his or her employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or the tax appeals tribunal under this chapter and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and

testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal under this chapter and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided in this chapter. Such officers shall be the city sheriff, and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-2414 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition

for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-2407 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations relating thereto, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the tax, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on

the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(3) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of

such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return has not been filed, that information has not been supplied pursuant to the provisions of this chapter or that records have not been retained pursuant to the provisions of this chapter shall be prima facie evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-2415 Returns to be secret. (a) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner, the tax appeals tribunal or any officer or employee of the city to divulge or make known in any manner any information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner in an action or proceeding under the provisions of this chapter, or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing under this section shall be construed to prohibit the delivery to a taxpayer or the taxpayer's duly authorized representative of a certified copy of any return filed in connection with his or her tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel or other legal representatives of the city, or by the district attorney of Richmond county, of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding under this chapter may be instituted. Returns shall be preserved for three years and thereafter until the commissioner permits them to be destroyed.

(b) (1) Any officer or employee of the city who willfully violates the provisions of subdivision (a) of this section shall be dismissed from office and be incapable of holding any public office in this city for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

(c) This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

(d) Notwithstanding anything in subdivision (a) of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the

charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-2416 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her, or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty or interest provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed in this section for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which, such provisions with respect to prima facie evidence of delivery and the postmark date, shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United

States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-2417 Construction and enforcement. This chapter shall be construed and enforced in conformity with article twenty-nine of the tax law, pursuant to which it is enacted.

# CHAPTER 25
# TAX ON OCCUPANCY OF HOTEL ROOMS

§ 11-2501 Definitions. When used in this chapter the following terms shall mean or include:

1. "Person." 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 thereof.

2. "Operator." Any person operating a hotel in the city of Staten Island, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel.

3. "Occupant." A person who, for a consideration, uses, possesses, or has the right to use or possess, any room or rooms in a hotel under any lease, concession, permit, right of access, license to use or other agreement, or otherwise. "Right to use or possess" includes the rights of a room remarketer as described in subdivision twelve of this section.

4. "Occupancy." The use or possession, or the right to the use or possession of any room or rooms in a hotel, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms. "Right to use or possess" includes the rights of a room remarketer as described in subdivision twelve of this section.

5. "Hotel." A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term "hotel" includes an apartment hotel, a motel, boarding house or club, whether or not meals are served.

6. "Room." Any room of any kind, other than a bathroom or lavatory, in any part or portion of a hotel which is available for, or let out for, use or possession for any purpose other than a place of assembly as defined in section 27-232 of the code of the preceding municipality.

7. "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, including any service or other charge or amount required to be paid as a condition for occupancy, and also any amount for which credit is allowed by the operator or room remarketer to the occupant, without any deduction therefrom whatsoever, whether received by the operator or a room remarketer or another person on behalf of either of them.

8. "Permanent resident." Any occupant of any room or rooms in a hotel for at least one hundred eighty consecutive days shall be considered a permanent resident with regard to the period of such occupancy.

9. "Commissioner of finance." The commissioner of finance of the city.

10. "Comptroller." The comptroller of the city.

11. "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.

12. "Room remarketer." A person who reserves, arranges for, conveys, or furnishes occupancy, whether directly or indirectly, to an occupant for rent in an amount determined by such room remarketer, directly or indirectly, whether pursuant to a written or other agreement. Such person's ability or authority to reserve, arrange for, convey, or furnish occupancy, directly or indirectly, and to determine rent therefor, shall be the "rights of a room remarketer". A room remarketer is

not a permanent resident with respect to a room for which such person has the rights of a room remarketer.

§ 11-2502 Imposition of tax. a. (1) On and after July first, nineteen hundred seventy until and including August thirty-first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of Staten Island at the rates set forth in, and determined in accordance with the following table:

| If the rent per day for the room is: | The tax is: |
|---|---|
| Less than $10 | $.25 per day |
| $10 or more, but less than $15 | $.50 per day |
| $15 or more, but less than $20 | $.75 per day |
| $20 or more | $1.00 per day |

(2) On and after September first, nineteen hundred eighty, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city of Staten Island at the rates set forth in, and determined in accordance with, the following table:

| If the rent per day for the room is: | The tax is: |
|---|---|
| $10 or more, but less than $20 | $.50 per day |
| $20 or more, but less than $30 | $1.00 per day |
| $30 or more, but less than $40 | $1.50 per day |
| $40 or more | $2.00 per day |

Where a person occupies a room for less than a full day and pays less than the rent for a full day, the tax shall nevertheless be the same amount as would be due had such person occupied the room for a full day at the rent for a full day.

(3) In addition to the tax imposed by paragraph two of this subdivision, there is hereby imposed and there shall be paid a tax for every occupancy of each room in a hotel in the city (A) at the rate of five percent of the rent or charge per day for each such room up to and including August thirty-first, nineteen hundred ninety, (B) at the rate of six percent of the rent or charge per day for each such room on and after September first, nineteen hundred ninety and before December first, nineteen hundred ninety-four, (C) at the rate of five percent of the rent or charge per day for each such room on and after December first, nineteen hundred ninety-four and before March first, two thousand nine, (D) at the rate of five and seven-eighths percent of the rent or charge per day for each such room on and after March first, two thousand nine and before December first, two thousand thirteen, (E) at the rate of five percent of the rent or charge per day for each such room on and after December first, two thousand thirteen and before December twentieth, two thousand thirteen, (F) at the rate of five and seven-eighths percent of the rent or charge per day for each such room on and after December twentieth, two thousand thirteen and before December first, two thousand twenty-three, and (G) at the rate of five percent of the rent or charge per day for each such room on and after December first, two thousand twenty-three.

(4) (A) When occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this chapter, and the rent paid for such occupancy does not qualify for the exemption in this subdivision, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges or other items on any sales slip, invoice, receipt, or other statement given the occupant

and such rent is reasonable in relation to the value of such property, services, amusement charges, or other items, only such separately stated rent will be subject to tax under this subdivision. (B) In regard to the collection of tax on occupancies by remarketers, when occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, whether or not such other items are taxable, the rent portion of the consideration for such sale shall be computed as follows: the total consideration for the sale multiplied by a fraction, the numerator of which shall be the consideration paid to the hotel for the occupancy and the denominator of which shall be the consideration paid to the hotel for the occupancy plus the consideration paid to the providers of the other items being sold, or by any other reasonable method pursuant to which the rent portion of consideration would be no less than the computation of rent portion of consideration under subparagraph (A) of this paragraph. Nothing in this subdivision shall be construed to subject to tax or exempt from tax any service or property or amusement charge or other items otherwise subject to tax or exempt from tax under this chapter.

(5) A room remarketer shall be allowed a refund or credit against the taxes collected and required to be remitted pursuant to section 11-2505 of this chapter in the amount of the tax it paid to the operator of the hotel or another room remarketer under this subdivision. Provided, however, that in order to qualify for a refund or credit under this paragraph with respect to any quarterly period, as described in subdivision a of section 11-2504 of this chapter, the room remarketer must, with respect to such quarter, (A) be registered for hotel room occupancy tax purposes under section 11-2514 of this chapter, and (B) collect the taxes imposed by paragraphs two and three of this subdivision. Subject to the conditions and limitations of this paragraph, the provisions of section 11-2507 of this chapter shall apply to refunds or credits under this paragraph.

(6) Where the rent is paid or charged or billed, or falls due on either a weekly, monthly or other term basis, the daily rent upon which the tax is determined shall be the result obtained by dividing the rent for such term by the number of days in such term. Where the rent is for more than one room, including but not limited to a suite of rooms, the daily rent per room upon which tax is determined shall be calculated by multiplying the daily rent for the group of rooms by a fraction, the numerator of which shall be the daily rent for the particular room, or a similar room, when such room is rented alone with similar bath facilities, and the denominator of which shall be the total of the daily rent for the individual rooms in the group of rooms, or similar rooms, when such rooms are rented alone with similar bath facilities. In any case in which it is not possible to determine the daily rent per room in the manner described under this paragraph, the commissioner of finance shall prescribe methods for making such determination.

b. (1) No tax shall be imposed under this chapter upon a permanent resident.

(2) For purposes of this subdivision, an occupant who is eligible to request and has requested a lease pursuant to the provisions of paragraph two of subdivision (a) of section 2522.5 of the rent stabilization regulations promulgated by the division of housing and community renewal of the state of New York, shall tentatively be accorded the status of permanent resident as of the date of such request, notwithstanding that such occupant has not met the one hundred eighty-consecutive-day requirement contained in subdivision eight of section 11-2501 of this

chapter as of such date. In the case of such an occupant, the operator or room remarketer shall not collect the taxes imposed by this chapter for any day, commencing with the date such lease is requested, which falls within a period of continuous occupancy by such occupant of a room or rooms in the hotel. Provided, however, if such occupant ceases to occupy a room or rooms in the hotel prior to the completion of one hundred eighty consecutive days of occupancy, any taxes not collected theretofore by reason of the provisions of this paragraph shall become immediately due and payable on the date of cessation of occupancy and shall be collected by the operator or room remarketer from such occupant. In the event, however, that the operator or room remarketer is unable to collect such taxes from the occupant, the operator or room remarketer shall not be liable to the city for such taxes. The provisions of this paragraph shall apply with respect to leases requested on or after September first, nineteen hundred ninety.

c. No tax shall be imposed under this chapter upon any organization described in subdivision (a) of section eleven hundred sixteen of the tax law to the extent such organization is not subject to the tax imposed under subdivision (e) of section eleven hundred five of the tax law.

d. (1) No tax shall be imposed under this chapter upon any person occupying any room or rooms in a hotel solely and directly as a result of such person's involuntary displacement from premises by the attack on the World Trade Center on September eleventh, two thousand one, provided such premises were not subject to the tax imposed by this section or the tax imposed under section eleven hundred seven of the tax law.

(2) Where an occupant claims exemption from the tax under the provisions of paragraph one of this subdivision, the rent shall be deemed taxable under this chapter unless the operator shall receive from the occupant claiming such exemption a signed written statement describing the specific circumstances providing the basis for such claim and containing such other information as the commissioner of finance may require. The operator shall retain such statement and provide it to the commissioner of finance upon request.

e. Where any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, carries on its activities in furtherance of any of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in said premises and rents therefrom received by such corporation or association shall not be subject to tax under this chapter. Nothing in this subdivision shall be deemed to include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

f. The tax to be collected shall be stated and charged separately from the rent and shown separately on any record thereof, at the time when the occupancy is arranged or contracted for and charged for and upon every evidence of occupancy or any bill or statement or charge made for said occupancy issued or delivered by the operator or room remarketer.

(1) Where an occupant rents a room directly from an operator, the tax shall be paid by the occupant to the operator as trustee for and on

account of the city, and the operator shall be liable for the collection of the tax on the rent and for the payment of the tax on the rent.

(2) The operator or room remarketer and any officer of any corporate operator or room remarketer shall be personally liable for the portion of the tax collected or required to be collected under this chapter, and the operator shall have the same right in respect to collecting the tax from the occupant, or in respect to nonpayment of the tax by the occupant as if the tax were a part of the rent for the occupancy payable at the time such tax shall become due and owing, including all rights of eviction, dispossession, repossession and enforcement of any innkeeper's lien that he or she may have in the event of nonpayment of rent by the occupant; provided however, that the commissioner of finance shall be joined as a party in any action or proceeding brought by the operator to collect or enforce collection of the tax.

g. Where the occupant has failed to pay and the operator or room remarketer has failed to collect a tax as imposed by this chapter, then in addition to all other rights, obligations and remedies provided, such tax shall be payable by the occupant directly to the commissioner of finance, and it shall be the duty of the occupant to file a return thereof with the commissioner of finance and to pay the tax imposed therein to the commissioner of finance within fifteen days after such tax was due.

h. The commissioner of finance may, wherever he or she deems it necessary for the proper enforcement of this chapter, provide by regulation that the occupant shall file returns and pay directly to the commissioner of finance the tax imposed by this chapter, at such times as returns are required to be filed and payment over made by the operator or room remarketer.

i. The tax imposed by this chapter shall be paid upon any occupancy on and after July first, nineteen hundred seventy, although such occupancy is had pursuant to a contract, lease or other arrangement made prior to such effective date. Where rent is paid, or charged or billed, or falls due on either a weekly, monthly, or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax imposed by this chapter to the extent that it covers any portion of the period on and after July first, nineteen hundred seventy, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of the number of days falling within said period, to the total number of days covered thereby. Where any tax has been paid pursuant to this chapter upon any rent which has been ascertained to be worthless, the commissioner of finance may by regulation provide for credit or refund of the amount of such tax upon application therefor as provided in section 11-2507 of this chapter.

j. For the purpose of the proper administration of this chapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all rents are subject to tax until the contrary is established, and the burden of proving that a rent for occupancy is not taxable under this chapter shall be upon the operator, the room remarketer, or the occupant. Where an occupant claims exemption from the tax under the provisions of subdivision c of this section, the rent shall be deemed taxable under this chapter unless the operator or room remarketer shall receive from the occupant claiming such exemption a copy of the exempt organization certificate that is necessary to obtain exemption from the tax imposed under subdivision (e) of section eleven hundred five of the tax law, together with a certificate duly executed by the organization named in such certificate certifying that the occupant is its agent,

representative or employee and that his or her occupancy is paid or to be paid by, and is necessary or required in the course of or in connection with the affairs of said organization.

k. No operator or room remarketer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this chapter is not considered as a mandatory addition to the rent charged to the occupant.

1. An occupancy that an operator conveys or furnishes to a room remarketer that the room remarketer intends to convey or furnish, directly or indirectly, to an occupant for rent shall be exempt from the taxes imposed by this section, provided that such room remarketer furnishes the operator with a certificate in such form and containing such information as may be prescribed by the commissioner of finance. The operator shall retain such statement and provide it to the commissioner of finance upon request.

§ 11-2503 Records to be kept. a. Every operator and every room remarketer shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of finance may by regulation require. Such records shall be available for inspection and examination at any time upon demand by the commissioner of finance or his or her duly authorized agent or employee and shall be preserved for a period of three years, except that the commissioner of finance may consent to their destruction within that period or may require that they be kept longer.

b. Notwithstanding the provisions of sections three hundred five and three hundred nine of the state technology law or any other law, the commissioner may require any person who has elected to maintain in an electronic format any portion of the records required to be maintained by that person under this chapter, to make the electronic records available and accessible to the commissioner, notwithstanding that the records are also maintained in a hard copy format.

§ 11-2504 Returns. a. Every operator and every room remarketer shall file with the commissioner of finance a return of occupancy and of rents, and of the taxes payable thereon, for the quarterly periods ending on the last day of February, May, August and November of each year. Such returns shall be filed within twenty days after the end of the quarterly period covered thereby. The commissioner of finance may permit or require returns to be made by other periods and upon such dates as he or she may specify. If the commissioner of finance deems it necessary in order to insure the payment of the tax imposed by this chapter, he or she may require returns to be made for shorter periods than those prescribed pursuant to the provisions of this subdivision and upon such dates as he or she may specify.

b. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as he or she may deem necessary for the proper administration of this chapter. The commissioner of finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

c. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient on its face the commissioner of finance shall take the necessary steps to enforce the filing of such a return or a corrected return.

§ 11-2505 Payment of tax. At the time of filing a return of occupancy and of rents each operator and room remarketer shall pay to the commissioner of finance the taxes imposed by this chapter upon the rents required to be included in such return, as well as all other moneys

collected by the operator or room remarketer acting or purporting to act under the provisions of this chapter, even though it be judicially determined that the tax collected is invalidly imposed. All the taxes for the period for which a return is required to be filed shall be due from the operator or room remarketer and payable to the commissioner of finance on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of rents and the taxes due thereon. Where the commissioner of finance in his or her discretion deems it necessary to protect revenues to be obtained under this chapter he or she may require any operator or room remarketer required to collect the tax imposed by this chapter to file with him or her a bond, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as the commissioner of finance may fix, to secure the payment of any tax or penalties and interest due or which may become due from such operator or room remarketer. In the event that the commissioner of finance determines that an operator or room remarketer is to file such bond he or she shall give notice to such operator or room remarketer to that effect specifying the amount of the bond required. The operator or room remarketer shall file such bond within five days after the giving of such notice unless within such five days the operator or room remarketer shall request in writing a hearing before the commissioner of finance at which the necessity, propriety and amount of the bond shall be determined by the commissioner of finance. Such determination shall be final and shall be complied with within fifteen days after the giving of notice thereof. In lieu of such bond, securities approved by the commissioner of finance or cash in such amount as he or she may prescribe, may be deposited which shall be kept in the custody of the commissioner of finance who may at any time without notice to the depositor apply them to any tax or interest or penalties due, and for that purpose the securities may be sold by him or her at public or private sale without notice to the depositor thereof.

§ 11-2506 Determination of tax. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices, such as number of rooms, location, scale of rents, comparable rents, type of accommodations and service, number of employees or other factors. Notice of such determination shall be given to the person liable for the collection and/or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the taxpayer has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing, or unless the commissioner of finance of his or her own motion shall redetermine the same. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal

pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the tax is assessed. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the tax was assessed, within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person liable for the tax unless: (a) the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of the proceeding; or (b) at the option of such person such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the taxes, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event such person shall not be required to deposit such taxes, penalties and interest as a condition precedent to the application.

§ 11-2507 Refunds. a. In the manner provided in this section the commissioner of finance shall refund or credit, without interest, any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if written application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund or credit is made or denied by the commissioner of finance, he or she shall state his or her reasons therefor and give notice thereof to the taxpayer in writing. Such application may be made by the occupant, operator, room remarketer or other person who has actually paid the tax to the commissioner of finance. Such application may also be made by an operator or room remarketer who has collected and paid over such tax to the commissioner of finance provided that the application is made within one year of the payment by the occupant to the operator or room remarketer, but no actual refund of moneys shall be made to such operator or room remarketer until he or she shall first establish to the satisfaction of the commissioner of finance, under such regulations as the commissioner of finance may prescribe, that he or she has repaid to the occupant the amount for which the application for refund is made. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and the applicant has requested a conciliation conference in accordance there-

with, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as provided in this section, shall be deemed an application for a revision of any tax, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review such decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person liable for the tax, that a final determination of tax was not previously made. Such a proceeding shall not be instituted by a person liable for the tax unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2506 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2506 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or of the commissioner of finance's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provision of said section, in which event refund or credit without interest shall be made of the tax, interest or penalty found to have been overpaid.

§ 11-2508 Reserves. In cases where the occupant, operator or room remarketer has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to such occupant, operator or room remarketer on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-2509 Remedies exclusive. The remedies provided by sections 11-2506 and 11-2507 of this chapter shall be the exclusive remedies available to any person for the review of tax liability imposed by this chapter; and no determination or proposed determination of tax or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, and action for money had and received or by any action or

proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a taxpayer may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2506 of this chapter.

§ 11-2510 Proceedings to recover tax. a. Whenever any operator or room remarketer or any officer of a corporate operator or room remarketer or any occupant or other person shall fail to collect and pay over any tax and/or to pay any tax, penalty or interest imposed by this chapter as provided, the corporation counsel shall, upon the request of the commissioner of finance bring or cause to be brought an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States. If, however, the commissioner of finance in his or her discretion believes that any such operator, or room remarketer, officer, occupant or other person is about to cease business, leave the state or remove or dissipate the assets out of which the tax, penalties or interest might be satisfied, and that any such tax, penalty or interest will not be paid when due, he or she may declare such tax, penalty or interest to be immediately due and payable and may issue a warrant immediately.

b. As an additional or alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff commanding him or her to levy upon and sell the real and personal property of the operator or room remarketer or officer of a corporate operator or room remarketer or of the occupant or other person liable for the tax, which may be found within the city for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant such sheriff shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. Whenever an operator shall make a sale, transfer, or assignment in bulk of any part or the whole of such operator's hotel or of his or her lease, license or other agreement or right to possess or operate such hotel, or of the equipment, furnishings, fixtures, supplies or stock of merchandise, or of the said premises or lease, license or other agreement or right to possess or operate such hotel and the equipment, furnishings, fixtures, supplies and stock of merchandise pertaining to the conduct or operation of said hotel, otherwise than in the ordinary and regular prosecution of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the commissioner of finance by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferor or assignor, has represented to, or informed the purchaser, transferee or assignee that it owes any tax pursuant to this chapter, and whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the commissioner of finance as required by the opening paragraph of this subdivision, or whenever the commissioner of finance shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferor or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferor or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision, the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the city of any such taxes theretofore or thereafter determined to be due to the city from the seller, transferor or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid taxes, additions to tax, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-2511 General powers of the commissioner of finance. In addition to the powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding thirty days; and to compromise disputed claims in connection with the taxes hereby imposed;

3. To request information from the tax commission of the state of New York or the treasury department of the United States relative to any

person; and to afford information to such tax commission or such treasury department relative to any person, any other provision of this chapter to the contrary notwithstanding;

4. To delegate his or her functions under this section to a commissioner or deputy commissioner in the department of finance or to any employee or employees of the department of finance;

5. To prescribe methods for determining the rents for occupancy and to determine the taxable and non-taxable rents;

6. To require any operator within the city to keep detailed records of the nature and type of hotel maintained and the nature and type of service rendered, and to require any operator or room remarketer to keep detailed records of the rooms available and rooms occupied daily, leases or occupancy contracts or arrangements, rents received, charged and accrued, the names and addresses of the occupants, whether or not any occupancy is claimed to be subject to the tax imposed by this chapter, and to furnish such information upon request to the commissioner of finance;

7. To assess, determine, revise and readjust the taxes imposed under this chapter.

§ 11-2512 Administration of oaths and compelling testimony. a. The commissioner of finance, his or her employees or agents duly designated and authorized by him or her, the tax appeals tribunal and any of its duly designated and authorized employees or agents shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the duties of the commissioner or the tax appeals tribunal under this chapter and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before such commissioner or tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided under this section. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-2513 Reference to tax. Whenever reference is made in placards or advertisements or in any other publication to this tax, such reference shall be substantially in the following form: "city tax on occupancy of hotel rooms", except that in any bill, receipt, statement or other

evidence or memorandum of occupancy or rent charge issued or employed by the operator the words "city tax" will suffice.

§ 11-2514 Registration. By June thirtieth, nineteen hundred seventy, or in the case of operators or room remarketers commencing business or opening new hotels after such date, within three days after such commencement or opening, every operator or room remarketer shall file with the commissioner of finance a certificate of registration in a form prescribed by the commissioner of finance. The commissioner of finance shall within five days after such registration issue without charge to each operator or room remarketer a certificate of authority empowering such operator or room remarketer to collect the tax from the occupant and duplicate thereof for each additional hotel of such operator or room remarketer. Each certificate or duplicate shall state the hotel to which it is applicable. Such certificates of authority shall be prominently displayed by the operator or room remarketer in such manner that it may be seen and come to the notice of all occupants and persons seeking occupancy. Such certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the commissioner of finance upon the cessation of business at the hotel named or upon its sale or transfer, or upon cessation of business of the named room remarketer.

§ 11-2515 Interest and penalties. (a) Interest on underpayments. If any amount of tax is not paid or paid over on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a return of tax within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as tax on such return.

(C) For purposes of this paragraph, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on a return required to be filed under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to

reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one-half of one percent of the amount of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of tax shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed upon the return. If the amount of tax required to be shown on a return is less than the amount shown as tax on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay tax required to be shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-2506 of this chapter, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one-half of one percent of such tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of tax stated in the notice and demand shall be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such paragraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the tax for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of tax is due to negligence or intentional disregard of this chapter or any rules or regulations related thereto, but without intent to defraud, there shall be added to the tax a penalty equal to five percent of the underpayment.

(2) There shall be added to the tax, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the tax, or, if earlier, the date of the payment of the tax.

(d) Underpayment due to fraud. (1) If any part of an underpayment of tax is due to fraud, there shall be added to the tax a penalty equal to two times of the underpayment.

(2) The penalty under this subdivision shall be in lieu of any other addition to tax imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any tax imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the tax imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to taxes, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) seven percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdi-

vision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) Officers of a corporate operator or room remarketer and partners in a partnership which is an operator or room remarketer shall be personally liable for the tax collected or required to be collected by such corporation or partnership under this chapter, and subject to the penalties and interest imposed by this section.

(2) The certificate of the commissioner of finance to the effect that a tax has not been paid, that a return, bond or registration certificate has not been filed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(3) Cross-reference: For criminal penalties, see chapter forty of this title.

(i) Any person required to make or maintain records under this chapter who fails to make or maintain or make available to the commissioner these records is subject to a penalty not to exceed one thousand dollars for the first quarterly period or part thereof for which the failure occurs and not to exceed five thousand dollars for each additional quarterly period or part thereof for which the failure occurs. This penalty is in addition to any other penalty provided for in this chapter but may not be imposed and collected more than once for failures for the same quarterly period or part thereof. If the commissioner determines that a failure to make or maintain or make available records in any quarterly period was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarterly period. These penalties will be paid and disposed of in the same manner as other revenues from this chapter. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this chapter, and all the provisions of this chapter relating to tax will be deemed also to apply to the penalties imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a person will be considered to have failed to make or maintain the required records when the commissioner of finance determines that the records made or maintained by that person for a quarterly period do not enable the commissioner to verify occupancy or the amounts received for such occupancy or the taxability of that occupancy and to conduct a complete audit.

(j) Any person required to make or maintain records under this chapter who fails to present and make available these records in an auditable form is subject to a penalty not to exceed one thousand dollars for each quarterly period or part thereof for which records maintained by that person are not presented and made available by that person in auditable form, even if these records are adequate to verify credits, receipts, and the taxability thereof and to perform a complete audit. This penalty is in addition to any other penalty provided for in this chapter, but will not be imposed and collected more than once for these failures for the same quarterly period or part thereof. If the commissioner determines that any failure described in this subdivision for a quarterly period was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarter. The penalties imposed by this subdivision will be paid and disposed of in the same manner as other revenues from this chapter. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this chapter, and all the provisions of

this chapter relating to tax will be deemed also to apply to the penalties imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a person will be considered to have failed to present and make records available in auditable form when the records presented by that person for that quarter lack sufficient organization, such as by date, invoice number, sales receipts, or sequential numbering, or are otherwise inadequate, without reorganizing, reordering or otherwise rearranging the records into an auditable form, to permit direct reconciliation of the receipts, invoices or other source documents with the entries for the quarterly period in the books and records and on the returns of that person.

(k) Any person who, having elected to maintain in an electronic format any portion or all of the records he or she is required to make and maintain by this chapter, fails to present and make these records available and accessible to the commissioner in electronic format, is subject to a penalty not to exceed five thousand dollars for each quarterly period or part thereof for which these electronic records are not presented and made available and accessible upon request, notwithstanding that the records may also be maintained and available in hard copy format. This penalty is in addition to any other penalty provided for in this chapter, but may not be imposed and collected more than once for a failure for the same quarterly period or part thereof. Provided, however, nothing in this subdivision will prevent the separate imposition, if applicable, of any penalty imposed by subdivision (i) or (j) of this section for the same quarterly period or part thereof. If the commissioner determines that the failure to present and make electronically maintained records available and accessible for a quarterly period was entirely due to reasonable cause and not to willful neglect, the commissioner must remit the penalty imposed for that quarter. These penalties will be paid and disposed of in the same manner as other revenues from this chapter. These penalties will be determined, assessed, collected, paid and enforced in the same manner as the tax imposed by this chapter, and all the provisions of this chapter relating to tax will be deemed also to apply to the penalty imposed by this subdivision. For purposes of the penalty imposed by this subdivision, a failure to present and make available and accessible a record maintained in electronic format includes not only the denial of access to the requested records that were maintained electronically, but also the failure to make available to the commissioner the information, knowledge, or means necessary to access and otherwise use the electronically maintained records in the inspection and examination of these records.

(l) Aiding or assisting in the giving of fraudulent returns, reports, statements or other documents. Any person who, with the intent that tax be evaded, for a fee or other compensation or as an incident to the performance of other services for which that person receives compensation, aids or assists in, or procures, counsels, or advises the preparation or presentation under this chapter, or in connection with any matter arising under this chapter, of any return, report, declaration, statement or other document that is fraudulent or false as to any material matter, or supplies any false or fraudulent information, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, report, declaration, statement or other document, will pay a penalty not exceeding five thousand dollars. The definitions in subsection (l) of section one thousand eighty-five of the tax law apply for the purposes of this penalty.

(m) False or fraudulent document penalty. Any taxpayer that submits a false or fraudulent document to the department will be subject to a penalty of one hundred dollars per document submitted, or five hundred dollars per tax return submitted. This penalty will be in addition to any other penalty provided by law.

§ 11-2516 Returns to be secret. a. Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the commissioner of finance, any officer or employee of the department of finance, any person engaged or retained on an independent contract basis, the tax appeals tribunal, any commissioner or employee of such tribunal, or any person who, pursuant to this section, is permitted to inspect any return or to whom a copy, an abstract or a portion of any return is furnished, or to whom any information contained in any return is furnished, to divulge or make known in any manner the rents or other information relating to the business of a taxpayer contained in any return required under this chapter. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the commissioner of finance in an action or proceeding under the provisions of this chapter or on behalf of any party to any action or proceeding under the provisions of this chapter when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a certified copy of any return filed in connection with his or her tax; nor to prohibit the delivery of such a certified copy of such return or of any information contained in or relating thereto, to the United States of America or any department thereof, to the state of New York or any department thereof, or to any agency or department of the city of Staten Island, provided the same is requested for official business; nor to prohibit the inspection for official business of such returns by the corporation counsel or other legal representatives of the city or by the district attorney of any county within the city; nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof. Returns shall be preserved for three years and thereafter until the commissioner of finance permits them to be destroyed.

b. (1) Any officer or employee of the city who willfully violates the provisions of subdivision a of this section shall be dismissed from office and be incapable of holding any public office for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

c. This section shall be deemed a state statute for purposes of paragraph (a) of subdivision two of section eighty-seven of the public officers law.

d. Notwithstanding anything in subdivision a of this section to the contrary, if a taxpayer has petitioned the tax appeals tribunal for administrative review as provided in section one hundred seventy of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four, the commissioner of finance shall be authorized to present to the tribunal any report or return of such taxpayer, or any information contained therein or relating thereto, which may be

material or relevant to the proceeding before the tribunal. The tax appeals tribunal shall be authorized to publish a copy or a summary of any decision rendered pursuant to section one hundred seventy-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-2517 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her or, if no return has been filed or application made, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to levy, appraise, assess, determine or enforce the collection of any tax or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return; provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

c. Where, before the expiration of the period prescribed in this section for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which, such provisions with respect to prima

facie evidence of delivery and the postmark date, shall apply to certified mail. Except as provided in subdivision f of this section, this subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

f. (1) Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the treasury of the United States pursuant to section seventy-five hundred two of the internal revenue code and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a designated delivery service. If the commissioner of finance finds that any delivery service designated by such secretary is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title. The commissioner of finance may also designate additional delivery services meeting the criteria of section seventy-five hundred two of the internal revenue code for purposes of this title, or may withdraw any such designation if the commissioner of finance finds that a delivery service so designated is inadequate for the needs of the city. Any reference in subdivision d of this section to the United States mail shall be treated as including a reference to any delivery service designated by the commissioner of finance and any reference in subdivision d of this section to a United States postmark shall be treated as including a reference to any date recorded or marked in the manner described in section seventy-five hundred two of the internal revenue code by a delivery service designated by the commissioner of finance, provided, however any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

(2) Any equivalent of registered or certified mail designated by the United States secretary of the treasury, or as may be designated by the commissioner of finance pursuant to the same criteria used by such secretary for such designations pursuant to section seventy-five hundred two of the internal revenue code, shall be included within the meaning of registered or certified mail as used in subdivision d of this section. If the commissioner of finance finds that any equivalent of registered or certified mail designated by such secretary or the commissioner of finance is inadequate for the needs of the city, the commissioner of finance may withdraw such designation for purposes of this title, provided, however, any withdrawal of designation or additional designation by the commissioner of finance shall not be effective for purposes of service upon the tax appeals tribunal, unless and until such withdrawal of designation or additional designation is ratified by the president of the tax appeals tribunal.

§ 11-2518 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter one hundred sixty-one

of the laws of nineteen hundred seventy, as amended by chapter one hundred sixty-two of the laws of nineteen hundred seventy, pursuant to which it is enacted.

§ 11-2519 Tourism and convention fund. Notwithstanding any provision of law to the contrary, with respect to the additional tax imposed at the rate of six percent on and after September first, nineteen hundred ninety and before December first, nineteen hundred ninety-four pursuant to subparagraph (B) of paragraph three of subdivision a of section 11-2502 of this chapter, four and one-sixth percent of the total revenues resulting from the imposition of such tax, including four and one-sixth percent of any interest or penalties thereon, shall be credited to and deposited in a special tourism and convention fund, which shall be used solely for the purpose of promoting tourism and conventions in the city. Seven-eighths of the moneys in such fund shall be made available to the New York Convention and Visitor's Bureau, Inc. pursuant to an annual contract with the city which may specify, among other things, the services which shall be provided by such bureau with such moneys and the content and number of reports which will have to be provided by such bureau to the city concerning the expenditure of such moneys, and provided that the annual budget and business plan of such bureau is approved by the mayor of the city or his or her designee. The remaining one-eighth of the fund shall be spent for promoting tourism and conventions which may include, at the mayor's discretion, moneys spent in connection with additional contracts made with the New York Convention and Visitor's Bureau, Inc. For purposes of this section, the term "promoting tourism and conventions" shall mean developing, placing and purchasing advertising promoting the city, and engaging in such other efforts as are designed to attract tourists and conventions to the city.

## CHAPTER 26
## TAX ON MORTGAGES

§ 11-2601 Imposition of tax. a. A tax of fifty cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on real property situated within the city and recorded on or after August first, nineteen hundred seventy-one and prior to February first, nineteen hundred eighty-two, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of fifty cents is hereby imposed on such mortgage, and shall be collected and paid as provided in this chapter.

b. With respect to: (1) one, two or three-family houses, individual cooperative apartments and individual residential condominium units, and (2) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, and with respect to all other real property a tax of one dollar and twelve and one-half cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on such real property situated within the city and recorded on or after February first, nineteen hundred eighty-two and before July first, nineteen hundred eighty-two, is hereby imposed on each such mortgage and shall be collected and paid as provided in this

chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage, and shall be collected and paid as provided in this chapter.

c. With respect to: (1) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of fifty cents, (2) with respect to one, two or three-family houses, individual cooperative apartments and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of sixty-two and one-half cents, and (3) with respect to all other real property, a tax of one dollar and twenty-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof or at any time thereafter by a mortgage on such real property situated within the city and recorded on or after July first, nineteen hundred eighty-two and before August first, nineteen hundred ninety, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage and shall be collected and paid as provided in this chapter.

d. With respect to: (1) real property securing a principal debt or obligation of less than five hundred thousand dollars, a tax of one dollar, (2) with respect to one, two or three-family houses and individual residential condominium units securing a principal debt or obligation of five hundred thousand dollars or more, a tax of one dollar and twelve and one-half cents, and (3) with respect to all other real property, a tax of one dollar and seventy-five cents, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured at the date of execution thereof, or at anytime thereafter by a mortgage on such real property situated within the city and recorded on or after August first, nineteen hundred ninety, is hereby imposed on each such mortgage and shall be collected and paid as provided in this chapter. If the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars, a tax of one dollar is hereby imposed on such mortgage and shall be collected and paid as provided in this chapter.

e. (1) For the purpose of determining whether a mortgage is subject to the tax imposed by subdivision b or c of this section at a rate in excess of fifty cents, or by subdivision d of this section at a rate in excess of one dollar, for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation, the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by such mortgage shall be aggregated with the principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by any other mortgage, where such mortgages form part of the same or related transactions and have the same or related mortgagors. If the commissioner of taxation and finance finds that a mortgage transaction or mortgage transactions have been formulated for the purpose of avoiding or evading a rate of tax imposed under this section in excess of the lowest such rate, rather than solely for an independent business or financial purpose, such commissioner shall treat all of the mortgages forming part of such transaction or trans-

actions as a single mortgage for the purpose of determining the applicable rate of tax. For the purposes of this subdivision, all mortgages having the same or related mortgagors offered for recording within a period of twelve consecutive months shall be presumed to form part of a related transaction, unless clear and convincing evidence is offered to the contrary. The commissioner of taxation and finance may require such affidavits and forms, and may prescribe such rules and regulations, as he or she determines to be necessary to enforce the provisions of this subdivision.

(2) The term "related", when used in this subdivision with reference to mortgagors, shall include, but shall not be limited to, the following relationships:

(i) members of a family, including spouses, ancestors, lineal descendants, and brothers and sisters, whether by the whole or half blood;

(ii) a shareholder and a corporation more than fifty percent of the value of the outstanding stock of which is owned or controlled directly or indirectly by such shareholder;

(iii) a partner and a partnership more than fifty percent of the capital or profits interest in which is owned or controlled directly or indirectly by such partner;

(iv) a beneficiary and a trust more than fifty percent of the beneficial interest in which is owned or controlled directly or indirectly by such beneficiary;

(v) two or more corporations, partnerships, associations, or trusts, or any combination thereof, which are owned or controlled, either directly or indirectly, by the same person, corporation or other entity, or interests; and

(vi) a grantor of a trust and such trust.

f. Notwithstanding any provision to the contrary in paragraph (a) of subdivision one of section two hundred fifty-five of the tax law, the taxes imposed by subdivision c or d of this section shall also apply to principal indebtedness or obligation secured by or which under any contingency may be secured by a supplemental instrument or additional mortgage, whether or not there is any new or further indebtedness or obligation other than the principal indebtedness or obligation secured by a recorded primary mortgage, where (1) the supplemental instrument or additional mortgage imposes the lien of a recorded mortgage upon real property situated within the city not previously subject to the mortgage or where an additional mortgage upon such additional property is recorded as additional or substitute security for indebtedness or obligation already secured by a recorded mortgage and (2) the recorded primary mortgage was on real property outside the city and recorded without payment of the city tax.

§ 11-2602 Payment and payment over of taxes. The taxes imposed by this chapter shall be payable on the recording of each mortgage of real property subject to taxes pursuant to such chapter. Such taxes shall be paid to the recording officer of the county in which the real property or any part thereof is situated, except where real property is situated within and without the city, the recording officer of the county in which the mortgage is first recorded shall collect the tax imposed by this chapter, as required by subdivision three of section two hundred fifty-three-a of the tax law. It shall be the duty of such recording officer to indorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so endorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded therewith. The record of such

receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage. Upon the first day of each month the city register and the recording officer of Richmond county shall pay over to the commissioner of finance of the city for credit to the general fund of such city, the balance of the moneys received during the preceding month upon account of taxes paid to him or her as prescribed in this section, after deducting the necessary expenses of his or her office as provided in section two hundred sixty-two of the tax law, except taxes paid upon mortgages which are first to be apportioned by the commissioner of taxation and finance, which taxes and money shall be paid over by him or her as provided by the determination of the said commissioner of taxation and finance, provided, however, in each instance where the tax imposed pursuant to section 11-2601 of this chapter is one dollar and twenty-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, fifty percent of the total amount of such tax, including fifty percent of any interest or penalties thereon, shall be set aside in a special account by the commissioner of finance, and in each instance where the tax imposed pursuant to that section is one dollar and seventy-five cents for each one hundred dollars and each remaining major fraction thereof of such principal debt or obligation, thirty-five and seven-tenths percent of the total amount of such tax, including thirty-five and seven-tenths percent of any interest or penalties thereon, shall also be set aside in such special account. Moneys in such account shall be used for payment by such commissioner to the state comptroller for deposit in the urban mass transit operating assistance account of the mass transportation operating assistance fund of any amount of insufficiency certified by the state comptroller pursuant to the provisions of subdivision six of section eighty-eight-a of the state finance law, and on the fifteenth day of each month, such commissioner shall transmit all funds in such account at the end of the preceding month, except the amount required for the payment of any amount of insufficiency certified by the state comptroller and such amount as he or she deems necessary for refunds and such other amounts necessary to finance the city transportation disabled committee and the city para-transit system as established by section fifteen-b of the transportation law, provided, however, that such amounts shall not exceed six percent of the total funds in the account but in no event be less than two hundred twenty-five thousand dollars beginning April first, nineteen hundred eighty-six, and further that beginning November fifteenth, nineteen hundred eighty-four and during the entire period prior to operation of such system, the total of such amounts shall not exceed three hundred seventy-five thousand dollars for the administrative expenses of such committee and fifty thousand dollars for the expenses of the agency designated pursuant to paragraph b of subdivision five of such section, and other amounts necessary to finance the operating needs of the private bus companies franchised by the city of Staten Island and eligible to receive state operating assistance under section eighteen-b of the transportation law, provided, however, that such amounts shall not exceed four percent of the total funds in the account, to the New York city transit authority for mass transit within the city.

§ 11-2603 Manner of administration and collection. The taxes imposed under this chapter shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and subdivision one of section two hundred fifty-five of the tax law. All the provisions of article eleven of the tax law relating

to or applicable to the administration and collection of the taxes imposed by subdivision one of section two hundred fifty-three and subdivision one of section two hundred fifty-five of the tax law shall apply to the taxes imposed under this chapter with the same force and effect as if those provisions had been set forth in full in this chapter except to the extent that any such provision is either inconsistent with a provision of this chapter or not relevant to the tax imposed by this chapter. For purposes of this chapter any reference in article eleven of the tax law to the tax or taxes imposed by such article shall be deemed to refer to a tax imposed by this chapter, and any reference to the phrase "within this state" shall be read as "within this city" unless a different meaning is clearly required. Whenever real property covered by the mortgage is partly within and partly without the city of Staten Island, the portion of the mortgage taxable under this chapter shall be determined in the manner prescribed in the first paragraph of section two hundred sixty of the tax law where the property without the city is located within the state and, in the manner prescribed in the second paragraph of such section of the tax law, where the property without the city is located without the state.

§ 11-2604 Tax additional. The tax imposed by this chapter shall be in addition to any taxes imposed by section two hundred fifty-three of the tax law.

## CHAPTER 27
## ANNUAL VAULT CHARGE

§ 11-2701 Definitions. When used in this chapter, the following terms shall mean or include:

1. "Person." An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, lessee, 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.

2. "Vault." Any subsurface opening, structure or erection, whether or not wholly or partly covered over, to the extent that it extends from the building line into any street of the city, for the erection of which a license fee is required pursuant to the charter of the city or this code.

3. "Street." Every public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk and viaduct, and every other class of public highway, road, square and place within or belonging to the city.

4. "Using, occupying or maintaining." Any right or authority to install, store or maintain property of any kind in a vault, or otherwise to use, occupy or maintain such vault for any purpose whatsoever. Such right or authority shall be deemed to exist wherever a vault has not been filled in or closed by the licensee or abutting property owner and the street restored to its original condition pursuant to the requirements of the charter of the city or this code.

5. "City surveyor." Any person appointed a surveyor of the city of Staten Island pursuant to the code of the city.

6. "Owner of the premises immediately adjoining the vault." Any person who is the owner of record of real property located in whole or in part within the city, from which a vault has been extended.

7. "Depth." The vertical distance from the ceiling, roof or top of a vault to the floor, bottom or lowest point thereof.

8. "City." The city of Staten Island.
9. "Comptroller." The comptroller of the city.
10. "Commissioner of finance." The commissioner of finance of the city.
11. "Return." Any return required to be filed as under this chapter provided.
12. "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.

§ 11-2702 Imposition of charge. (a) In addition to any and all other license fees, charges and taxes, there is hereby imposed and there shall be paid an annual vault charge, beginning as of July first, nineteen hundred sixty-two, for the privilege of occupying, using or maintaining a vault in the streets of the city, to be paid by the owner of the premises immediately adjoining the vault.

(A) For periods prior to July first, nineteen hundred seventy-one such annual vault charges shall be at the following rates:

1. On any vault occupying up to two hundred and fifty square feet in plane or surface area but no more than twelve feet in depth, thirty-five cents per square foot but not less than five dollars for the total occupancy;

2. On any vault occupying more than two hundred fifty square feet in plane or surface area but not more than twelve feet in depth, thirty-five cents per square foot for the first two hundred fifty square feet of an area and sixty cents per square foot for that portion of the area in excess of two hundred fifty square feet;

3. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraphs one and two and by applying to such total area the same rates as provided in subparagraphs one and two. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten percent for each foot of depth less than ten feet.

(B) For periods beginning on or after July first, nineteen hundred seventy-one and ending on or before May thirty-first, nineteen hundred eighty, such annual vault charges shall be at the following rates:

1. On any vault occupying no more than twelve feet in depth, one dollar per square foot of plane or surface area but not less than five dollars for the total occupancy;

2. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth, or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraph one of this paragraph and by applying to such total area the same rate as provided in subparagraph one of this paragraph. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten percent for each foot of depth less than ten feet.

(C) For periods beginning on or after June first, nineteen hundred eighty such annual vault charge shall be at the following rates:

1. On any vault occupying no more than twelve feet in depth, two dollars per square foot of plane or surface area;

2. On any vault more than twelve feet in depth, an additional charge for each additional ten feet in depth, or fraction thereof calculated by adding the plane or surface area for each such additional depth to the area calculated pursuant to subparagraph one of this paragraph and by

applying to such total area the same rate as provided in subparagraph one of this paragraph. The additional area for any additional depth of ten feet or fraction thereof shall however, be reduced by ten percent for each foot of depth less than ten feet.

(D) Notwithstanding any provision of law to the contrary, no annual vault charge or additional charge shall be imposed pursuant to this chapter on or after June first, nineteen hundred ninety-eight.

(b) Where the owner of the premises immediately adjoining the vault is exempt from or otherwise not liable for the annual vault charge, the tenant, lessee or any other person using, occupying or maintaining such vault shall be liable therefor.

(c) The annual vault charge imposed by this section shall be due from, and shall be paid by, the person who is the owner of the premises immediately adjoining the vault on the first day of July of the year for which such charge is imposed except that, on and after June first, nineteen hundred seventy-two, such charge shall be due from, and shall be paid by the person who is the owner of the premises immediately adjoining the vault on the first day of June of the year for which such charge is imposed. Where the annual vault charge is imposed pursuant to subdivision (b) of this section, such annual vault charge shall be due from and paid by, the tenant, lessee or any other person using, occupying or maintaining the vault on the first day of July of the year for which such charge is imposed, except that for years beginning on or after June first, nineteen hundred seventy-two, such charge shall be due from, and paid by, the tenant, lessee or any other person using, occupying or maintaining the vault on the first day of June of the year for which such charge is imposed.

(d) In the event that the annual vault charge as imposed by this chapter shall be held invalid, then such annual vault charge shall be deemed a tax on the same basis and at the same rates as provided in this chapter and all other provisions of this chapter shall be equally applicable.

(e) Where, prior to the first day of August in any year in which the annual vault charge imposed under this chapter shall be due and payable, if a vault or part thereof is made unavailable for use or occupancy, the annual vault charge paid for such year, pursuant to the provisions of this chapter, shall be refunded in full upon application to and furnishing of such proof as the commissioner of finance may require. Where such closing of a vault occurs prior to the last day of December in any such year, fifty percent of the annual vault charge due and actually paid for such year shall be refunded to the payor upon application to and furnishing of such proof as the commissioner of finance may require. Where such closing is limited to a part of a vault, such a refund shall be granted only to the extent that the closing reduces the area of the vault and thereby the amount of the charge for the vault.

§ 11-2703 Exemptions. The charges imposed by this chapter shall not apply to the following:

1. The state of New York, or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada, improvement district or other political subdivision of the state;

2. The United States of America, insofar as it is immune from taxation;

3. The United Nations or other world-wide international organizations of which the United States of America is a member;

4. Any corporation, or association, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this subdivision shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this subdivision.

5. Any vault constituting property defined as a special franchise in section one hundred two of the real property tax law or assessed as such pursuant to article six of such law.

6. Any vault to the extent that it is used, occupied or maintained pursuant to a revocable consent granted pursuant to section three hundred seventy-four of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

7. Any vault immediately adjoining a building or structure designed for and used exclusively as a single-family or a two-family dwelling house or any other real property which is classified as class one real property pursuant to section eighteen hundred two of the real property tax law.

8. Any street occupancy usable solely and exclusively for the melting of snow and ice, or for delivery into the immediately adjoining premises, of coal, oil or other fuel for the heating thereof.

9. Any vault occupying no more than thirty-six square feet in plane or surface area, irrespective of the depth of such vault.

§ 11-2704 Filing of returns. a. Every person subject to the annual vault charge under this chapter shall, on or before the first day of August, nineteen hundred sixty-two, and on or before the fifteenth day of July of every year thereafter, file with the commissioner of finance a return showing the dimensions of the vault as to length, width and depth, except that the return required to be filed on or before July fifteenth, nineteen hundred seventy-two shall be filed on or before June fifteenth, nineteen hundred seventy-two and those due in later years shall be required to be filed on or before June fifteenth of such years. The commissioner of finance, if he or she deems it necessary to insure adequate information with regard to the proper charge to be imposed, may require information returns from other persons, including the owners of real property regardless of whether a vault has been extended therefrom, the users or lessees of the vault or lessees or tenants of the property adjoining the vault.

b. The forms of returns shall be prescribed by the commissioner of finance and shall contain such information as he or she may deem necessary for the proper administration of this chapter; and the commissioner of finance or his or her duly authorized agents or employees shall be empowered to require supplemental returns. If a return required by this chapter is not filed or if the return when filed is incorrect or insufficient on its face, the commissioner of finance shall take the necessary steps to enforce the filing of such a return or of a corrected return. Upon failure to comply with a notice to furnish a return or a sufficient return, the commissioner of finance may require the filing of a certificate signed by a city surveyor specifying the dimensions of the vault.

c. For each annual vault charge year beginning on or after June first, nineteen hundred eighty-nine, the commissioner of finance shall, at least thirty days prior to the commencement of such year, mail to each person who has filed an annual vault charge return for the immediately preceding year an annual vault charge return form on which shall be shown the amount of the charge for such immediately preceding year. Such return form shall be accompanied by instructions which explain in clear and simple terms how to determine the dimensions and extent of street occupancy of a vault, how to calculate the amount of the charge, and such other matters as the commissioner considers necessary or helpful to an understanding of the requirements of this chapter, provided, however, neither the failure of the commissioner to mail such return form and instructions nor the failure of any person to receive the same shall relieve any person of the obligation to file any return required under this section or of liability for the charge, interest or penalties imposed by this chapter.

d. If no form or other notice has previously been sent to a person subject to the annual vault charge with respect to the amount of vault charge owed for any year, the commissioner of finance shall notify such person of the amount owed as soon as practicable after discovering that such amount is owed.

§ 11-2705 Payment of vault charges. a. At the time of filing a return as required by this chapter the person subject to the annual vault charge shall pay to the commissioner of finance the charge imposed by this chapter. Such charge shall be due and payable on the last day on which such return is required to be filed, without regard to whether a return is filed or whether the return which is filed correctly shows the amount due.

b. The charge otherwise required to be paid with the return due on or before June fifteenth, nineteen hundred eighty shall be paid in two equal installments as follows: one-half of the charge shall be paid with the return on or before June fifteenth, nineteen hundred eighty, and one-half of the charge shall be paid on or before September fifteenth, nineteen hundred eighty.

§ 11-2706 Presumption and burden of proof. For the purpose of the proper administration of this chapter and to prevent evasion of the annual vault charge hereby imposed, it shall be presumed, except where the depth of a vault exceeds twelve feet, that the size of the vault as indicated upon the license therefor originally issued by the former borough president of Staten Island up to and including December thirty-first, nineteen hundred sixty-two, and the commissioner of transportation thereafter is a proper measure of the charge until the contrary is established, and the burden of proving that the size of the vault is not accurately stated upon the license shall be upon the person so claiming. In cases where no license of record has been issued for a vault or where the depth of a vault exceeds twelve feet, the burden of proving the actual size of the vault shall be upon the person liable for the vault charge.

§ 11-2707 Determination of vault charge. If a return required by this chapter is not filed or if a return when filed is incorrect or insufficient, the amount of the vault charge due shall be determined by the commissioner of finance from such information as may be obtainable and, if necessary, the charge may be estimated on the basis of external indices, including but not limited to the records of the department of transportation, the reports of tax assessors, the reports of inspectors and investigators in the offices of the commissioner of finance and

commissioner of transportation, or other information or factors. Notice of such determination shall be given to the person liable for the payment thereof. Such determination shall finally and irrevocably fix the vault charge unless the person against whom it is assessed shall, within ninety days after the giving of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursuant to section 11-124 of the code of the preceding municipality and such person has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal, or unless the commissioner of finance of his or her own motion shall redetermine the same. Upon such hearing the tax appeals tribunal may require the filing of a certificate signed by a city surveyor specifying the dimensions of the vault. After such hearing the tax appeals tribunal shall give notice of its decision to the person against whom the vault charge is assessed. A decision of the tax appeals tribunal sitting en banc shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court by the person against whom the vault charge was assessed within four months after the giving of the notice of such tax appeals tribunal decision. A proceeding under article seventy-eight of the civil practice law and rules shall not be instituted by a person against whom the vault charge is assessed unless (a) the amount of any vault charge sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the commissioner of finance and there shall be filed with the commissioner of finance an undertaking in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed or the vault charge confirmed the person against whom the vault charge is assessed will pay all costs and charges which may accrue in the prosecution of the proceeding, or (b) at the option of such person, such undertaking filed with the commissioner of finance may be in a sum sufficient to cover the vault charge, penalties and interest thereon stated in such decision plus the costs and charges which may accrue against him or her in the prosecution of the proceeding, in which event such person shall not be required to deposit such vault charge, penalties and interest as a condition precedent to the application.

§ 11-2708 Refunds. a. In the manner provided in this section, the commissioner of finance shall refund or credit, without interest, any vault charge, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application to the commissioner of finance for such refund shall be made within one year from the payment thereof. Whenever a refund is made or denied by the commissioner of finance, he or she shall state his or her reason therefor and give notice thereof to the applicant in writing. Such application may be made by the owner of the premises, or other person, who has actually paid the vault charge. The commissioner of finance may, in lieu of any refund required to be made, allow credit therefor on payments due from the applicant.

b. Any determination of the commissioner of finance denying a refund or credit pursuant to subdivision a of this section shall be final and irrevocable unless the applicant for such refund or credit, within ninety days from the mailing of notice of such determination, or, if the commissioner of finance has established a conciliation procedure pursu-

ant to section 11-124 of the code of the preceding municipality and the applicant has requested a conciliation conference in accordance therewith, within ninety days from the mailing of a conciliation decision or the date of the commissioner's confirmation of the discontinuance of the conciliation proceeding, both (1) serves a petition upon the commissioner of finance and (2) files a petition with the tax appeals tribunal for a hearing. Such petition for a refund or credit, made as provided in this section, shall be deemed an application for a revision of any vault charge, penalty or interest complained of. Such hearing and any appeal to the tax appeals tribunal sitting en banc from the decision rendered in such hearing shall be conducted in the manner and subject to the requirements prescribed by the tax appeals tribunal pursuant to sections one hundred sixty-eight through one hundred seventy-two of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four. After such hearing, the tax appeals tribunal shall give notice of its decision to the applicant and to the commissioner of finance. The applicant shall be entitled to review such decision of the tax appeals tribunal sitting en banc by a proceeding pursuant to article seventy-eight of the civil practice law and rules, provided such proceeding is instituted within four months after the giving of the notice of such decision, and provided, in the case of an application by a person against whom the vault charge is assessed, that a final determination of the vault charge due was not previously made. Such a proceeding shall not be instituted by a person against whom the vault charge is assessed unless an undertaking is filed with the commissioner of finance in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the vault charge confirmed, such person will pay all costs and charges which may accrue in the prosecution of such proceeding.

c. A person shall not be entitled to a revision, refund or credit under this section of a vault charge, interest or penalty which had been determined to be due pursuant to the provisions of section 11-2707 of this chapter where he or she has had a hearing or an opportunity for a hearing, as provided in said section, or has failed to avail himself or herself of the remedies therein provided. No refund or credit shall be made of annual vault charge, interest or penalty paid after a determination by the commissioner of finance made pursuant to section 11-2707 of this chapter unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the tax appeals tribunal after a hearing or on the commissioner's own motion, or, if such tax appeals tribunal affirms in whole or in part the determination of the commissioner of finance, in a proceeding under article seventy-eight of the civil practice law and rules, pursuant to the provisions of said section, in which event refund or credit without interest shall be made of the vault charge, interest or penalty found to have been overpaid.

§ 11-2709 Reserves. In cases where the person or persons liable for the vault charge imposed by this chapter has applied for a refund and has instituted a proceeding under article seventy-eight of the civil practice law and rules to review a determination adverse to him or her on his or her application for refund, the comptroller shall set up appropriate reserves to meet any decision adverse to the city.

§ 11-2710 Remedies exclusive. The remedies provided by sections 11-2707 and 11-2708 of this chapter shall be the exclusive remedies available to any person for the review of the liability imposed under this chapter, and no determination or proposed determination of an annu-

al vault charge or determination on any application for refund by the commissioner of finance, nor any decision by the tax appeals tribunal or any of its administrative law judges, shall be enjoined or reviewed by an action for declaratory judgment, an action for money had and received or by any action or proceeding other than, in the case of a decision by the tax appeals tribunal sitting en banc, a proceeding in the nature of a certiorari proceeding under article seventy-eight of the civil practice law and rules; provided, however, that a person liable for the annual vault charge may proceed by declaratory judgment if he or she institutes suit within thirty days after a deficiency assessment is made and pays the amount of the deficiency assessment to the commissioner of finance prior to the institution of such suit and posts a bond for costs as provided in section 11-2707 of this chapter.

§ 11-2711 Proceedings to recover annual vault charge. a. Whenever any person shall fail to pay any vault charge, penalty or interest imposed by this chapter as provided in this chapter, the corporation counsel shall, upon the request of the commissioner of finance bring, or cause to be brought, an action to enforce the payment of the same on behalf of the city of Staten Island in any court of the state of New York or of any other state or of the United States.

b. As an additional remedy or as an alternate remedy, the commissioner of finance may issue a warrant, directed to the city sheriff, commanding him or her to levy upon and sell the real and personal property of the person liable for vault charges which may be found within the city for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the commissioner of finance and to pay to him or her the money collected by virtue thereof within sixty days after the receipt of such warrant. The city sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the vault charge, penalty and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. The city sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he or she shall be entitled to the same fees, which he or she may collect in the same manner. In the discretion of the commissioner of finance a warrant of like terms, force and effect may be issued and directed to an officer or employee of the department of finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner of finance may from time to time issue new warrants and shall also have the same remedies to enforce the amount due thereunder as if the city had recovered judgment therefor and execution thereon had been returned unsatisfied.

c. In addition to any other lien provided for in this section, the annual vault charge imposed by this chapter shall become a lien, binding upon the premises immediately adjoining such vault, on the date such charge is required to be paid until the same is paid in full.

d. The commissioner of finance, if he or she finds that the interests of the city will not thereby be jeopardized, and upon such conditions as the commissioner of finance may require, may release any property from the lien of any warrant or vacate such warrant for unpaid vault charges, additions to vault charges, penalties and interest filed pursuant to subdivision b of this section, and such release or vacating of the warrant may be recorded in the office of any recording officer in which such warrant has been filed. The clerk shall thereupon cancel and discharge as of the original date of docketing the vacated warrant.

§ 11-2712 General powers of the commissioner of finance. In addition to all other powers granted to the commissioner of finance in this chapter, he or she is hereby authorized and empowered:

1. To make, adopt and amend rules and regulations appropriate to the carrying out of this chapter and the purpose thereof;

2. To extend, for cause shown, the time for filing any return for a period not exceeding sixty days; and to compromise disputed claims in connection with the vault charges imposed under this chapter;

3. To delegate his or her functions under this chapter to a deputy commissioner of finance or any employee or employees of the department of finance;

4. To prescribe methods for determining the size, dimensions, depth and extent of street occupancy of a vault; to set forth the manner of computing the vault charges under this chapter; to prescribe standards or methods, by regulation or otherwise, for determining whether a vault has been made unavailable for use or occupancy; and the commissioner of finance or his or her designated employees or agents shall have power to inspect premises for the purpose of determining the extent, if any, of liability imposed by this chapter.

5. To require any owner of premises or licensee or other person using, occupying or maintaining a vault to obtain from the commissioner of finance a certificate stating the dimensions and depth of the vault and that the vault charge thereon has been paid and to exhibit the same to duly authorized employees at the premises or real property adjoining the said vault, and to keep such records, and for such length of time, as may be required for the proper administration of this chapter, and to furnish such records to the commissioner of finance upon request;

6. To assess, reassess, determine, revise and readjust the vault charges imposed under this chapter;

7. Where he or she has exercised his or her authorized power to require the filing of a certificate signed by a city surveyor specifying the dimensions of a vault and the owner of the premises has failed to comply, he or she may obtain such certificate and, in such situation, the necessary expense of obtaining such certificate shall constitute a lien against such premises until paid.

8. The commissioner of finance or his or her designated employees or agents shall have power to inspect premises for the purpose of determining the extent, if any, of liability imposed by this chapter.

§ 11-2713 Administration of oaths and compelling testimony. a. The commissioner of finance, his or her employees duly designated and authorized by the commissioner, the tax appeals tribunal and any of its duly designated and authorized employees shall have power to administer oaths and take affidavits in relation to any matter or proceeding in the exercise of their powers and duties under this chapter. The commissioner of finance and the tax appeals tribunal shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information pertinent to the performance of the

duties of the commissioner or of the tax appeals tribunal under this chapter and of the enforcement of this chapter and to examine them in relation thereto, and to issue commissions for the examination of witnesses who are out of the state or unable to attend before such commissioner or the tax appeals tribunal or excused from attendance.

b. A justice of the supreme court either in court or at chambers shall have power summarily to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and documents called for by the subpoena of the commissioner of finance or the tax appeals tribunal under this chapter.

c. Cross-reference; criminal penalties. For failure to obey subpoenas or for testifying falsely, see section 11-4007 of this title; for supplying false or fraudulent information, see section 11-4009 of this title.

d. The officers who serve the summons or subpoena of the commissioner of finance or the tax appeals tribunal under this chapter and witnesses attending in response thereto shall be entitled to the same fees as are allowed to officers and witnesses in civil cases in courts of record, except as otherwise provided under this chapter. Such officers shall be the city sheriff and his or her duly appointed deputies or any officers or employees of the department of finance or the tax appeals tribunal, designated to serve such process.

§ 11-2714 Interest and penalties. (a) Interest on underpayments. If any annual vault charge is not paid on or before the last date prescribed for payment, without regard to any extension of time granted for payment, interest on such amount at the rate set by the commissioner of finance pursuant to subdivision (g) of this section, or, if no rate is set, at the rate of seven and one-half percent per annum, shall be paid for the period from such last date to the date of payment. In computing the amount of interest to be paid, such interest shall be compounded daily. Interest under this subdivision shall not be paid if the amount thereof is less than one dollar.

(b) (1) Failure to file return. (A) In case of failure to file a return under this chapter on or before the prescribed date, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as vault charge on such return five percent of the amount of such charge if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(B) In the case of a failure to file a vault charge return within sixty days of the date prescribed for filing of such return, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to the vault charge under subparagraph (A) of this paragraph shall not be less than the lesser of one hundred dollars or one hundred percent of the amount required to be shown as vault charge on such return.

(C) For purposes of this paragraph, the amount of vault charge required to be shown on the return shall be reduced by the amount of any part of the charge which is paid on or before the date prescribed for payment of the charge and by the amount of any credit against the charge which may be claimed upon the return.

(2) Failure to pay vault charge shown on return. In case of failure to pay the amount shown as vault charge on a return required to be filed

under this chapter on or before the prescribed date, determined with regard to any extension of time for payment, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as vault charge on such return one-half of one percent of the amount of such charge if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month the amount of vault charge shown on the return shall be reduced by the amount of any part of the charge which is paid on or before the beginning of such month and by the amount of any credit against the charge which may be claimed upon the return. If the amount of vault charge required to be shown on a return is less than the amount shown as such charge on such return, this paragraph shall be applied by substituting such lower amount.

(3) Failure to pay vault charge required to be shown on return. In case of failure to pay any amount in respect of any vault charge required to be shown on a return required to be filed under this chapter which is not so shown, including a determination made pursuant to section 11-1106 of this title, within ten days of the date of a notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of vault charge stated in such notice and demand one-half of one percent of such charge if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For the purpose of computing the addition for any month, the amount of vault charge stated in the notice and demand shall be reduced by the amount of any part of the charge which is paid before the beginning of such month.

(4) Limitations on additions.

(A) With respect to any return, the amount of the addition under paragraph one of this subdivision shall be reduced by the amount of the addition under paragraph two of this subdivision for any month to which an addition applies under both paragraphs one and two. In any case described in subparagraph (B) of paragraph one of this subdivision, the amount of the addition under such paragraph one shall not be reduced below the amount provided in such subparagraph.

(B) With respect to any return, the maximum amount of the addition permitted under paragraph three of this subdivision shall be reduced by the amount of the addition under paragraph one of this subdivision, determined without regard to subparagraph (B) of such paragraph one, which is attributable to the charge for which the notice and demand is made and which is not paid within ten days of such notice and demand.

(c) Underpayment due to negligence. (1) If any part of an underpayment of a vault charge is due to negligence or intentional disregard of this chapter or any rules or regulations pursuant thereto, but without intent to defraud, there shall be added to the charge a penalty equal to five percent of the underpayment.

(2) There shall be added to the charge, in addition to the amount determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to the negligence or intentional disregard referred to in such paragraph one, for the period beginning on the last date prescribed by law for payment of such under-

payment, determined without regard to any extension, and ending on the date of the assessment of the charge, or, if earlier, the date of the payment of the charge.

(d) Underpayment due to fraud. (1) If any part of an underpayment of a vault charge is due to fraud, there shall be added to the charge a penalty equal to fifty percent of the underpayment.

(2) There shall be added to the charge, in addition to the penalty determined under paragraph one of this subdivision, an amount equal to fifty percent of the interest payable under subdivision (a) of this section with respect to the portion of the underpayment described in such paragraph one which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment, determined without regard to any extension, and ending on the date of the assessment of the charge, or, if earlier, the date of the payment of the charge.

(3) The penalty under this subdivision shall be in lieu of any other addition to the vault charge imposed by subdivision (b) or (c) of this section.

(e) Additional penalty. Any person who, with fraudulent intent, shall fail to pay any vault charge imposed by this chapter, or to make, render, sign or certify any return, or to supply any information within the time required by or under this chapter, shall be liable for a penalty of not more than one thousand dollars, in addition to any other amounts required under this chapter to be imposed, assessed and collected by the commissioner of finance. The commissioner of finance shall have the power, in his or her discretion, to waive, reduce or compromise any penalty under this subdivision.

(f) The interest and penalties imposed by this section shall be paid and disposed of in the same manner as other revenues from this chapter. Unpaid interest and penalties may be enforced in the same manner as the vault charge imposed by this chapter.

(g)(1) Authority to set interest rates. The commissioner of finance, shall set the rate of interest to be paid pursuant to subdivision (a) of this section, but if no such rate of interest is set, such rate shall be deemed to be set at seven and one-half percent per annum. Such rate shall be the rate prescribed in paragraph two of this subdivision but shall not be less than seven and one-half percent per annum. Any such rate set by the commissioner of finance shall apply to vault charges, or any portion thereof, which remain or become due on or after the date on which such rate becomes effective and shall apply only with respect to interest computed or computable for periods or portions of periods occurring in the period in which such rate is in effect.

(2) General rule. The rate of interest set under this subdivision shall be the sum of (i) the federal short-term rate as provided under paragraph three of this subdivision, plus (ii) five percentage points.

(3) Federal short-term rate. For purposes of this subdivision:

(A) The federal short-term rate for any month shall be the federal short-term rate determined by the United States secretary of the treasury during such month in accordance with subsection (d) of section twelve hundred seventy-four of the internal revenue code for use in connection with section six thousand six hundred twenty-one of the internal revenue code. Any such rate shall be rounded to the nearest full percent, or, if a multiple of one-half of one percent, such rate shall be increased to the next highest full percent.

(B) Period during which rate applies.

(i) In general. Except as provided in clause (ii) of this subparagraph, the federal short-term rate for the first month in each calendar quarter shall apply during the first calendar quarter beginning after such month.

(ii) Special rule for the month of September, nineteen hundred eighty-nine. The federal short-term rate for the month of April, nineteen hundred eighty-nine shall apply with respect to setting the rate of interest for the month of September, nineteen hundred eighty-nine.

(4) Publication of interest rate. The commissioner of finance shall cause to be published in the City Record, and give other appropriate general notice of, the interest rate to be set under this subdivision no later than twenty days preceding the first day of the calendar quarter during which such interest rate applies. The setting and publication of such interest rate shall not be included within paragraph (a) of subdivision five of section one thousand forty-one of the city charter of the preceding municipality as it existed January first, nineteen hundred ninety-four relating to the definition of a rule.

(h) Miscellaneous. (1) The certificate of the commissioner of finance to the effect that a vault charge has not been paid, that a vault has not been licensed, that a return has not been filed, that access has not been allowed, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof.

(2) Cross-reference: For criminal penalties, see chapter forty of this title.

§ 11-2715 Notices and limitations of time. a. Any notice authorized or required under the provisions of this chapter may be given to the person for whom it is intended by mailing it in a postpaid envelope addressed to such person at the address given in the return filed by him or her pursuant to the provisions of this chapter or in any application made by him or her or, if no such return has been filed or application made, then to the address of the premises immediately adjoining the vault. The mailing of a notice as in this subdivision provided, shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice as in this subdivision provided.

b. The provisions of the civil practice law and rules or any other law relative to limitations of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken by the city to appraise, assess, determine, levy or enforce the collection of any vault charge or penalty provided by this chapter. However, except in the case of a wilfully false or fraudulent return with intent to evade the vault charge, no assessment shall be made after the expiration of more than three years from the date of such return; provided, however, that where no return has been filed as provided by law, the annual vault charge may be assessed at any time.

c. Where, before the expiration of the period prescribed in this section for the assessment of an additional vault charge, a person has consented in writing that such period be extended, the amount of such additional vault charge due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

d. If any return, claim, statement, notice, application, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority

of any provision of this chapter is, after such period or such date, delivered by United States mail to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom such document is required to be filed, or to which or to whom such payment is required to be made, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subdivision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, or for making the payment, including any extension granted for such filing or payment, and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the commissioner of finance, the tax appeals tribunal, bureau, office, officer or person to which or to whom addressed, and the date of registration shall be deemed the postmark date. The commissioner of finance and, where relevant, the tax appeals tribunal are authorized to provide by regulation the extent to which, such provisions with respect to prima facie evidence of delivery and the postmark date, shall apply to certified mail. This subdivision shall apply in the case of postmarks not made by the United States postal service only if and to the extent provided by regulation of the commissioner of finance or, where relevant, the tax appeals tribunal.

e. When the last day prescribed under authority of this chapter, including any extension of time, for performing any act falls on a Saturday, Sunday or legal holiday in the state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or legal holiday.

§ 11-2715.1 Vault charge amnesty program. a. Notwithstanding any other provision of law to the contrary, there is hereby established a nine-month amnesty program, beginning January first, nineteen hundred eighty-nine and ending September thirtieth, nineteen hundred eighty-nine (hereinafter referred to as the "amnesty period"), for all persons owing the annual vault charge imposed by this chapter. Such amnesty program shall be administered by the commissioner of finance and shall apply to liabilities for annual vault charge years ending prior to June first, nineteen hundred eighty-nine.

b. (1) A person seeking amnesty pursuant to this section must, during the amnesty period, file a written application therefor with the commissioner of finance, on a form prescribed by the commissioner, and must provide such information as the commissioner may require. In order to qualify for amnesty, such person must pay all annual vault charges for which he or she is liable. Upon payment by such person to the commissioner of all such charges as provided in this subdivision, the commissioner shall waive any applicable penalties and interest, and no civil, administrative or criminal action or proceeding shall be brought against such person with respect to the charges so paid. In addition, the commissioner shall release the lien binding upon the premises immediately adjoining the vault pursuant to subdivision c of section 11-2711 of this chapter for charges which became payable prior to the time such person acquired title to the premises. Failure to pay all charges as provided in this subdivision shall invalidate any amnesty granted pursuant to this section.

(2) In the case of any vault adjoining premises owned by a person who (A) prior to January first, nineteen hundred eighty-nine, paid all annual vault charges and interest and penalties for which he or she was liable, and (B) is otherwise in full compliance with this chapter, the commissioner of finance shall release the lien binding upon the premises immediately adjoining the vault pursuant to subdivision c of section 11-2711 of this chapter for charges which became payable prior to the time such person acquired title to the premises.

c. Amnesty shall not be granted to any person subject to the annual vault charge who is a party to any civil litigation which is pending on the date of such person's application in any court of this state or the United States for nonpayment or other delinquency in relation to the annual vault charge. A civil litigation shall not be deemed to be pending if such person withdraws from such litigation prior to the granting of amnesty.

d. No refund or credit shall be granted of any penalty or interest paid prior to the time the person subject to the annual vault charge makes a request for amnesty pursuant to subdivision b of this section.

e. Unless the commissioner of finance on his or her own motion redetermines the amount of the annual vault charge, no refund or credit shall be granted of any charges paid under this section.

f. The commissioner of finance shall formulate such regulations as are necessary, issue forms and instructions, and take any and all other actions necessary to implement the provisions of this section. Furthermore, prior to and throughout the duration of the amnesty period, the commissioner of finance shall implement a plan for prominently announcing and explaining the amnesty program. Such plan shall be reasonably calculated to inform all property owners who may be liable for vault charges and may include written announcements sent in tax bills and other mailings done by the city of Staten Island to property owners, public service announcements, advertisements in newspapers of general circulation and notification of community boards. The plan shall include, but not be limited to, information which explains the determination of vault size and charge.

§ 11-2715.3 Severability. If any clause, sentence, paragraph, section or part of this chapter or the application thereof to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter or the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

§ 11-2716 Construction and enforcement. This chapter shall be construed and enforced in conformity with chapter nine hundred forty-nine of the laws of nineteen hundred sixty-two, pursuant to which it is enacted.

§ 11-2717 Effective date. This chapter shall take effect July first, nineteen hundred sixty-two and shall remain in effect so long as the power of the city to adopt such laws for revenue purposes shall exist.

## CHAPTER 28
## CLAIMS AGAINST FIRE INSURANCE PROCEEDS

§ 11-2801 Claims against fire insurance proceeds. Definitions. 1. As used in this chapter, any inconsistent provision of law notwithstanding, the following terms shall have the following meanings:

(a) "Commissioner" means the commissioner of finance.

(b) "Real property" means property upon which there is erected any residential, commercial or industrial building or structure except a one or two family residential structure.

(c) "Lien" means any lien including liens for taxes, special ad valorem levies, special assessments and municipal charges arising by operation of law against property in favor of the city and remaining undischarged for a period of one year or more.

(d) "Board" means the board created by subdivision five of this section.

(e) "Special lien" means a lien upon fire insurance proceeds pursuant to this chapter and chapter seven hundred thirty-eight of the laws of nineteen hundred seventy-seven.

(f) "Fund" means the fire insurance proceeds fund created pursuant to subdivision ten of this section.

2. The commissioner shall file a notice of intention to claim against the proceeds of fire insurance policies pursuant to section twenty-two of the general municipal law with the state superintendent of insurance for entry in the index of liens maintained by him or her as provided in section three hundred thirty-one of the insurance law.

3. Prior to the payment of any proceeds of a policy of insurance for damages caused by fire to real property, which policy insures the interest of an owner and is issued on real property located within the city, and following notification to the commissioner by an insurer of the filing of a claim for payment of such proceeds, the commissioner shall claim, by serving a certificate of lien, against such proceeds to the extent of any lien, including interest and penalties to the date of the claim, thereon, which claim when made and perfected in the manner provided for in section twenty-two of the general municipal law and section three hundred thirty-one of the insurance law, shall constitute a special lien against such proceeds and shall, as to such proceeds, be prior to all other liens and claims except the claim of a mortgagee of record named in such policy. Notice of the service of the certificate of the special lien shall be given to the insured by certified mail.

4. The provisions of this chapter shall not be deemed or construed to alter or impair the right of the city to acquire or enforce any lien against property but shall be in addition to any other power provided by law to acquire or enforce such right.

5. The fire insurance proceeds claims board is hereby established to administer the provisions of subdivisions six through thirteen of this section. The board shall consist of the first deputy mayor, who shall be chairperson, the commissioner of buildings, the commissioner of housing preservation and development, and the commissioner of finance, each of whom shall have the power to designate an alternate to represent him or her at board meetings with all the rights and powers, including the right to vote, reserved to all board members, provided that such designation shall be in writing to the chairperson. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the board for the carrying out of its functions. Each member shall serve without additional compensation except for expenses actually incurred.

6. Whenever the proceeds of policy of fire insurance which will be or has been paid to the city instead of an insured, all or part of such proceeds may be paid or released to the insured if the insured satisfies the board that the affected premises have been or will be repaired or restored, that such repairs or restoration are in the public interest, and the insured is issued and complies with a certificate of the board pursuant to this chapter. To secure such payment or release of proceeds the insured must notify the board within forty-five days after the mailing to the insured of a notice of the service of the certificate of special lien pursuant to subdivision three of this section, of the intention to restore or repair the affected premises and must file with the board a completed application with all required supporting documentation pursuant to subdivision seven of this section within sixty days thereafter, unless the board grants an extension for a stated period of time.

7. The release or return to the insured of any amounts to which he or she or it would otherwise be entitled to claim shall be subject to the following conditions:

(a) Such release or return shall be subject to the repair or restoration of the affected premises, in accordance with applicable building laws, to the condition it was in prior to the time the lien of the city arose, or to an improved condition.

(b) The insured shall file with the board an application in affidavit form, with such supporting documentation as the board shall require, containing the following:

(i) A complete description of the nature and extent of the damage to the insured premises and of the condition of the premises prior to the time the lien of the city arose;

(ii) A complete description of the nature of the repairs or restoration to be undertaken and the cost thereof;

(iii) A statement as to the source of funds needed to complete such repairs or restoration if the insurance proceeds are not sufficient therefor;

(iv) The name and address of each contractor who will effect such repairs or restoration;

(v) An estimated time schedule showing how long the repairs or restoration, and each phase thereof, will take; and

(vi) Such other information as may be required by the board to enable it to determine whether the repairs or restoration are in the public interest and will be or have been timely and properly made.

(c) Upon a preliminary approval by the board of an application pursuant to paragraph (b) of this subdivision, the board may issue a certificate, to be signed by the chairperson or his or her designee; evidencing the right of release to the insured of amounts representing insurance proceeds, upon such conditions as may be set forth therein. The repairs or restoration required by the board shall be completed in compliance with the terms and conditions of the certificate prior to the release or return of any part of the insurance proceeds, provided however that the board may, upon the written request of the insured and in its sole discretion, approve a prior release of such proceeds or a portion thereof, in a lump sum or in installments, where the insured certifies and demonstrates that such release is required to permit such repairs or restoration to go forward. Any such insurance proceeds released or returned prior to the completion of the repairs or restoration required by the board may be paid directly to the contractor or contractors responsible for making such repairs or restoration. Such

payment shall, to the extent thereof, release the board from further liability to the insured.

8. If the insured: (i) fails to notify the city of his or her or its intention to repair or restore the affected premises as required in subdivision six of this section, (ii) fails to file a completed application pursuant to this chapter, or (iii) fails to obtain a certificate from the board or comply therewith within the time set forth, the right of the insured to assert a claim against the insurance proceeds, except to the extent they exceed the amount of the lien, shall terminate.

9. Until such termination, any insurance proceeds received by the city shall be deposited in a special fund and shall be retained therein. Upon termination of the insured's right to claim against the proceeds, the proceeds and any interest accrued thereon shall be applied to the liens affecting the premises in a manner determined by the board and may be transferred to the general fund.

10. There shall be established in the office of the commissioner a fund for the deposit of fire insurance proceeds to be held and applied in accordance with this chapter. Such funds shall not be held together with the general tax levies in the general fund.

11. The lien or liens against the affected premises upon which the special lien against proceeds is based shall continue in full force and effect except to the extent that such lien or liens are or have been paid.

12. The board may, pursuant to this chapter, release, compromise or adjust the special lien upon insurance proceeds created by this chapter. Any certificate issued by such board pursuant to this chapter shall be for the purpose of preserving and evidencing the right of release of the special lien created by this chapter, shall be subject solely to the provisions of this chapter, and shall not be deemed to be a contract subject to city regulation. Any repair or restoration performed in anticipation of a release of insurance proceeds shall not be deemed to be a public work or municipal project nor to have been done pursuant to a municipal contract.

13. The board shall be empowered to promulgate rules and regulations and to adopt approved forms to be used by applicants.

## CHAPTER 40
## CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

§ 11-4001 Definitions. (a) As used in this chapter, the term "person" shall include, but shall not be limited to, an individual, corporation (including a dissolved corporation), partnership, association, trust or estate.

(b) As used in this chapter, the term "person" shall also include an officer, employee or agent of a corporation; a member, employee or agent of a partnership or association; an employee or agent of an individual proprietorship; an employee or agent of an estate or trust; or a fiduciary.

(c) As used in this chapter, the term "felony" and the term "misdemeanor" shall have the same meaning as they have in the penal law, and the disposition of such offenses and the sentences imposed therefor shall be as provided in such law, except: (1) notwithstanding the provisions of paragraph a of subdivision one of section 80.00 and paragraph (a) of subdivision one of section 80.10 of the penal law relating to the fine for a felony, the court may impose a fine not to exceed the greater of double the amount of the underpaid tax liability resulting from the

commission of the crime or fifty thousand dollars, or, in the case of a corporation the fine may not exceed the greater of double the amount of the underpaid tax liability resulting from the commission of the crime or two hundred fifty thousand dollars, and (2) notwithstanding the provisions of subdivision one of section 80.05 and paragraph (b) of subdivision one of section 80.10 of the penal law relating to the fine for a class A misdemeanor, the court may impose a fine not to exceed ten thousand dollars, except that in the case of a corporation the fine may not exceed twenty thousand dollars.

(d) As used in this chapter:

(1) "city" shall mean the city of Staten Island; and

(2) "state" shall mean the state of New York.

§ 11-4002 Tax fraud acts. (a) As used in this chapter, "tax fraud act" means willfully engaging in an act or acts or willfully causing another to engage in an act or acts pursuant to which a person:

(1) fails to make, render, sign, certify, or file any return or report required under the provisions of any designated chapter of this title or any rule or regulation promulgated thereunder within the time required by or under the provisions of any designated chapter of this title or such rule or regulation;

(2) knowing that a return, report, statement or other document under any designated chapter of this title contains any materially false or fraudulent information, or omits any material information, files or submits that return, report, statement or document with the city or the state, or with any public office or public officer of the city or the state;

(3) knowingly supplies or submits materially false or fraudulent information in connection with any return, audit, investigation, or proceeding or fails to supply information within the time required by or under the provisions of any designated chapter of this title or any rule or regulation promulgated under any designated chapter of this title;

(4) engages in any scheme to defraud the city or the state or a government instrumentality of the city or of the state by false or fraudulent pretenses, representations or promises as to any material matter, in connection with any tax imposed under any designated chapter of this title or any matter under any designated chapter of this title;

(5) fails to remit any tax collected in the name of the city or the state or on behalf of the city or the state when such collection is required under any designated chapter of this title;

(6) fails to collect any tax required to be collected under chapter twelve, thirteen, twenty-three-A, twenty-three-B or twenty-five of this title;

(7) with intent to evade any tax imposed under any designated chapter of this title, fails to pay such tax; or

(8) issues an exemption certificate, interdistributor sales certificate, resale certificate, or any other document capable of evidencing a claim that taxes imposed under a designated chapter of this title do not apply to a transaction, which he or she does not believe to be true and correct as to any material matter, which omits any material information, or which is false, fraudulent, or counterfeit.

(b) For purposes of this section, the term "willfully" shall mean acting with either intent to defraud, intent to evade the payment of taxes or intent to avoid a requirement of this title, a lawful requirement of the commissioner or a known legal duty.

(c) For purposes of this chapter, the term "designated chapter" shall mean chapter five, six, seven, eight, nine, eleven, twelve, thirteen,

fourteen, fifteen, twenty-one, twenty-two, twenty-three-A, twenty-four, twenty-five or twenty-seven of this title.

§ 11-4003 City criminal tax fraud in the fifth degree. A person commits city criminal tax fraud in the fifth degree when he or she commits a tax fraud act. City criminal tax fraud in the fifth degree is a class A misdemeanor.

§ 11-4004 City criminal tax fraud in the fourth degree. A person commits city criminal tax fraud in the fourth degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under any designated chapter of this title, or to defraud the city or the state or any instrumentality of the city or the state, the person pays the city or the state or any public office or public officer of the city or the state or any instrumentality of the city or state, whether by means of underpayment or receipt of refund or both, in a period of not more than one year in excess of three thousand dollars less than the tax liability that is due. City criminal tax fraud in the fourth degree is a class E felony.

§ 11-4005 City criminal tax fraud in the third degree. A person commits city criminal tax fraud in the third degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under any designated chapter of this title, or to defraud the city or the state or any instrumentality of the city or the state, the person pays the city or the state or any public office or public officer of the city or the state or any instrumentality of the city or state, whether by means of underpayment or receipt of refund or both, in a period of not more than one year in excess of ten thousand dollars less than the tax liability that is due. City criminal tax fraud in the third degree is a class D felony.

§ 11-4006 City criminal tax fraud in the second degree. A person commits city criminal tax fraud in the second degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under any designated chapter of this title, or to defraud the city or the state or any instrumentality of the city or the state, the person pays the city or the state or any public office or public officer of the city or the state or any instrumentality of the city or state, whether by means of underpayment or receipt of refund or both, in a period of not more than one year in excess of fifty thousand dollars less than the tax liability that is due. City criminal tax fraud in the second degree is a class C felony.

§ 11-4007 City criminal tax fraud in the first degree. A person commits city criminal tax fraud in the first degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under any designated chapter of this title, or to defraud the city or the state or any instrumentality of the city or the state, the person pays the city or the state or any public office or public officer of the city or the state or any instrumentality of the city or state, whether by means of underpayment or receipt of refund or both, in a period of not more than one year in excess of one million dollars less than the tax liability that is due. City criminal tax fraud in the first degree is a class B felony.

§ 11-4008 Aggregation. For purposes of this chapter, the payments due and not paid under any designated chapter of this title pursuant to a common scheme or plan or due and not paid, within one year, may be charged in a single count, and the amount of underpaid tax liability incurred, within one year, may be aggregated in a single count.

§ 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.

(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.

§ 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.

(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.

§ 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.

(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.

(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.

(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.

(d) For the purposes of this section, the possession or transportation within this city by any person, other than an agent, at any one time of five thousand or more cigarettes in unstamped or unlawfully stamped packages shall be presumptive evidence that such cigarettes are possessed or transported for the purpose of sale and are subject to the tax imposed by chapter thirteen of this title. With respect to such possession or transportation, any provisions of chapter thirteen of this title providing for a time period during which a use tax imposed by such chapter may be paid on unstamped cigarettes or unlawfully or improperly stamped cigarettes or during which such cigarettes may be returned to an agent shall not apply. The possession within this city of more than four hundred cigarettes in unstamped or unlawfully stamped packages by any person other than an agent at any one time shall be presumptive evidence that such cigarettes are subject to tax as provided by chapter thirteen of this title.

(e) Nothing in this section shall apply to common or contract carriers or warehouseman while engaged in lawfully transporting or storing unstamped packages of cigarettes as merchandise, nor to any employee of such carrier or warehouseman acting within the scope of his employment, nor to public officers or employees in the performance of their official duties requiring possession or control of unstamped or unlawfully stamped packages of cigarettes, nor to temporary incidental possession by employees or agents of persons lawfully entitled to possession, not to persons whose possession is for the purpose of aiding police officers in performing their duties.

(f) Any willful act or omission, other than those described in section 11-4002 of this chapter or subdivision (a), (b), (c), (d), (e) or (g) of this section, by any person which constitutes a violation of any provision of chapter thirteen of this title or subchapter one of chapter two of title twenty of the code of the preceding municipality shall constitute a misdemeanor.

(g) Any person who falsely or fraudulently makes, alters or counterfeits any stamp prescribed by the commissioner of finance under the provisions of chapter thirteen of this title, or causes or procures to be falsely or fraudulently made, altered or counterfeited any such stamp, or knowingly and willfully utters, purchases, passes or tenders as true any such false, altered or counterfeited stamp, or knowingly and willfully possess any cigarettes in packages bearing any such false, altered or counterfeited stamp, and any person who knowingly and willfully makes, causes to be made, purchases or receives any device for forging or counterfeiting any stamp, prescribed by the commissioner of finance under the provisions of chapter thirteen of this title, or who knowingly and willfully possesses any such device, shall be guilty of a class E felony. For the purposes of this subdivision, the words "stamp prescribed by the commissioner of finance" shall include a stamp, impression or imprint made by a metering machine, the design of which has been approved by the commissioner of finance and the state tax commission.

§ 11-4012.1 Tobacco products tax. (a) Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by section 11-1302.1 of this chapter or the payment thereof shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.

(b) Any willful act or omission with respect to the tax imposed by section 11-1302.1 of this chapter, with the exception of those described in subdivision (a) of this section, by any person which constitutes a

violation of any provision of chapter thirteen of this title or chapter two of title twenty of the code of the preceding municipality shall constitute a misdemeanor.

§ 11-4014 Tax on commercial motor vehicles and motor vehicles for transportation of passengers. (a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any stamp, indicia of payment or indicia that no tax is payable authorized by chapter eight of this title, or who knowingly acquires, possesses, disposes of or uses such a counterfeited or forged stamp, indicia of payment or indicia that no tax is payable, or who transfers a stamp, indicia of payment or indicia that no tax is payable where such a transfer is not authorized by such chapter shall be guilty of a misdemeanor.

(b) The owner or driver of any motor vehicle subject to the tax imposed by chapter eight who, upon demand, shall fail to exhibit the stamp or other indicia of payment of the tax to the commissioner of finance, his duly authorized agent or employee, or any police officer of this city or state, as required by subdivision a of section 11-809 of this chapter, shall be guilty of a misdemeanor.

§ 11-4015 Tax on owners of motor vehicles. (a) Any person who counterfeits or forges, or causes or procures to be counterfeited or forged, or aids or assists in counterfeiting or forging, by any way, art, or means, any receipt or other document evidencing payment or exemption from the tax imposed by chapter twenty-two of this title, or who knowingly acquires, possesses, disposes of or uses such a counterfeited or forged receipt or other document, shall be guilty of a misdemeanor.

(b) Any person who uses, operates or parks or permits the use, operation or parking upon any public highway or street of a motor vehicle owned by him or her or under his or her control for which the tax imposed by chapter twenty-two of this title has not been paid in accordance with the provisions of such chapter and the regulations prescribed thereunder shall be guilty of a misdemeanor. For the purpose of this subdivision any person using, operating or parking a motor vehicle shall be presumed to be doing so with the permission of the owner of such motor vehicle.

(c) To the extent that any other section of this chapter is applicable to the tax imposed by chapter twenty-two of this title, any reference in such section to the commissioner of finance shall be deemed a reference to the commissioner of motor vehicles or to the commissioner of finance if designated as his or her agent.

§ 11-4016 Hotel room occupancy tax. (a) Any person who willfully fails to file a registration certificate as required pursuant to the provisions of chapter twenty-five of this title and such data in connection therewith as the commissioner of finance by regulation or otherwise may require, or willfully fails to display or surrender a certificate of authority as required by chapter twenty-five of this title, or willfully assigns or transfers such certificate of authority, shall be guilty of a misdemeanor, provided, however, that the provisions of this subdivision shall not apply to a failure to surrender a certificate of authority which is required to be surrendered where business never commenced.

(b) Any person who willfully fails to charge separately the tax imposed under chapter twenty-five of this title or willfully fails to state such tax separately on any bill, statement, memorandum or receipt issued or employed by such person upon which the tax is required to be stated separately as provided in such chapter, or who shall refer or

cause reference to be made to this tax in a form or manner other than required by such chapter, shall be guilty of a misdemeanor.

§ 11-4017 Violation of secrecy provisions. Any person who violates the provisions of subdivision a of section 11-1214, subdivision (a) of section 11-2415, subdivision a of section 11-2115, subdivision a of section 11-1516, subdivision a of section 11-818, subdivision a of section 11-716, subdivision a of section 11-2215, subdivision a of section 11-1116, subdivision one of section 11-688, subdivision one of section 11-538, subdivision a of section 11-2516, or subdivision a of section 11-1414 of this title shall be guilty of a misdemeanor.

§ 11-4018 Other offenses. (a) Any person who willfully fails to keep or retain any records required to be kept or retained by chapter seven, twelve, fourteen, twenty-one, twenty-two, twenty-four or twenty-seven of this title shall be guilty of a misdemeanor.

(b) Any person willfully simulating, altering, defacing, destroying or removing any evidence of the filing of a return or the payment of a tax provided for in chapter twenty-one of this title shall be guilty of a misdemeanor.

(c) Any person failing to file a certificate of registration or information registration certificate as required by chapter eight of this title shall be guilty of a misdemeanor.

(d) Any person refusing access to personnel authorized by the commissioner of finance to inspect any vault or any premises concerning which a return or information return may be required under chapter twenty-seven of this title shall be guilty of a misdemeanor.

§ 11-4019 Jurisdiction. For purposes of the taxes imposed by chapter five or six of this title, any prosecution under this chapter may be conducted in any county where the person against whom a violation or violations of any of the provisions of this chapter are charged resides or has a place of business, or from which such person received any income, or in any county in which any such violation is committed.

(a) Notwithstanding any other provision of law, the corporation counsel shall have concurrent jurisdiction with any district attorney in the prosecution of any offenses under this chapter.

(b) Notwithstanding any other provision of law, the attorney general shall have concurrent jurisdiction with the corporation counsel and with any district attorney in the prosecution of any offenses under this chapter relating to the tax imposed by chapter thirteen of this title, as well as any offenses arising out of such prosecution.

§ 11-4020 Disposition of fines. All fines levied under this chapter shall be paid to the commissioner of finance and deposited in the general fund of the city.

§ 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision five of section 2.10 of such law, acting pursuant to his or her special duties, shall discover any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has not been paid or the stamps not affixed as required by such chapter, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized cigarettes and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or recep-

tacle shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized cigarettes, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his or her own motion release the seized cigarettes, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of the notice of such decision. Such proceeding shall not be instituted unless there shall first be filed with the commissioner of finance an undertaking, issued by a surety company authorized to transact business in New York state and approved by the superintendent of insurance of New York state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve, to the effect that if such proceeding be dismissed, or the seizure confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machines or receptacles, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machines or receptacles at public sale and pay the proceeds into the treasury of the city to the credit of the general fund. Such seized vending machines or receptacles may be sold prior to forfeiture if the owner of the seized property consents to the sale. Notwithstanding any other provision of this section, the commissioner of finance may enter into an agreement with the state tax commission to provide for the disposition between the city and state of the proceeds from any such sale. The commissioner of finance may also transfer any seized cigarettes to the state for destruction. All cigarettes forfeited to the state shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited cigarettes. Such commissioner may, prior to any destruction of cigarettes, permit the true holder of the trademark rights in the cigarettes to inspect such forfeited cigarettes in order to assist in any investigation regarding such cigarettes.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom said cigarettes were seized to redeem the said cigarettes, and any vending machine or receptacle seized therewith, or may permit the owner of any such cigarettes, vending machine or receptacle to redeem the same, by the payment of the tax due, plus a penalty of fifty percent thereof, plus interest on the amount of tax due for each month or fraction thereof after such tax became due, determined without regard to any extension of time for filing or paying, at the rate applicable under subdivision d

of section 11-1317 of this title and the costs incurred in such proceeding, which total payment shall not be less than five dollars; provided, however, that such seizure and sale or redemption shall not be deemed to relieve any person from fine or imprisonment provided for in this chapter for violation of any provisions of this chapter or chapter thirteen of this title.

(e) In the alternative, the commissioner of finance may dispose of any cigarettes seized pursuant to this section, except those that violate, or are suspected of violating, federal trademark laws or import laws, by transferring them to the department of correction for sale to or use by incarcerated individuals in such institutions.

§ 11-4022 Filing of documents. For purposes of the prosecution of offenses under the provisions of this title, reports, returns, statements, other documents or other information required to be filed with or delivered to the commissioner of finance shall include such items which under the provisions of this title are required to be recorded or filed with, served upon or delivered to another person, including, but not limited to, a recording officer of any county within the state, county clerk, any other governmental agency or entity, or other entity in its capacity as an agent of the commissioner of finance.

§ 11-4023 Authority to seal premises. (a) If any person has been finally determined to have engaged in the acts described in subdivision (b) of this section, the commissioner of finance shall be authorized to order:

(1) the sealing of any premises operated by such person where such acts occurred; and

(2) the removal, sealing or making inoperable of any devices, items or goods used in connection with any of such acts.

(b) The following acts shall serve as the basis for a sealing order pursuant to this section:

(1) the violation of subdivision a or b of section 11-1303 of this title or section 17-703 or 20-202 of the code of the preceding municipality on at least two occasions within a three-year period; or

(2) the violation of any provision of chapter thirteen of this title or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivision a or b of section 17-706, 17-715 or 20-202 of the code of the preceding municipality on at least three occasions within a three-year period; or

(3) the violation of any provision of section 10-203 of the code of the preceding municipality on at least two occasions within a three-year period.

(c) Orders of the commissioner to seal premises. (1) Orders of the commissioner issued pursuant to this section shall be posted at the premises at which the acts described in subdivision (b) of this section have occurred.

(2) Ten days after the date of such posting, and upon the written directive of the commissioner, police officers designated in section 1.20 of the criminal procedure law and peace officers employed by the department of finance, including but not limited to the sheriff, undersheriff and deputy sheriffs of the city of New York designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, are authorized to act upon and enforce such orders.

(3) Any devices, items or goods removed pursuant to this section, shall be stored in a garage, pound or other place of safety and the owner or other person lawfully entitled to the possession of such devices, items or goods may be charged with reasonable costs for removal

and storage payable prior to the release of such devices, items or goods to such owner or such other person.

(4) The owner or other person lawfully entitled to reclaim the devices, items or goods described in paragraph three of this subdivision shall reclaim such devices, items or goods. If such owner or such other person does not reclaim such devices, items or goods within ninety days of their removal, such devices, items or goods shall be subject to forfeiture upon notice and judicial determination in accordance with provisions of law. Upon forfeiture the department shall, upon a public notice of at least five days, sell such forfeited devices, items or goods at public sale. The net proceeds of such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the city.

(d) Unsealing of premises. The commissioner shall order that any premises which are sealed pursuant to this section shall be unsealed and that any devices, items or goods removed, sealed or otherwise made inoperable pursuant to this section shall be released, unsealed or made operable upon:

(1) payment of all outstanding cigarette taxes and civil penalties and all reasonable costs for removal and storage; and

(2) the expiration of a period of time from the date of enforcement of the order to be determined by the commissioner not to exceed sixty days.

(e) Any person aggrieved by an order issued pursuant to this section may seek judicial review of such order through a proceeding pursuant to article seventy-eight of the civil practice law and rules.

(f) Removal of seal. Any person who removes the seal on any premises or removes the seal on or makes operable any devices, items or goods sealed or otherwise made inoperable in accordance with an order of the commissioner shall be guilty of a misdemeanor.

§ 11-4024 Seizure and forfeiture of taxed and lawfully stamped cigarettes sold or possessed by unlicensed retail or wholesale dealers, flavored tobacco products, flavored electronic cigarettes and flavored e-liquid. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs of the city of New York designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, shall discover (1) any cigarettes subject to any tax provided by chapter thirteen of this title, and upon which the tax has been paid and the stamps affixed as required by such chapter, but such cigarettes are sold, offered for sale or possessed by a person in violation of section 11-1303 of this code or section 17-703 or 20-202 of the code of the preceding municipality, or (2) any flavored tobacco product that is sold, offered for sale or possessed with intent to sell in violation of section 17-715 of the code of the preceding municipality, he or she is hereby authorized and empowered forthwith to seize and take possession of such cigarettes or flavored tobacco product, together with any vending machine or receptacle in which such cigarettes or flavored tobacco product are held for sale. Such cigarettes or flavored tobacco product, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized cigarettes or flavored tobacco product and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized cigarettes, flavored tobacco product, vending machine or

receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his or her own motion release the seized cigarettes, flavored tobacco product, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Cigarettes or flavored tobacco product forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that cigarettes that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the cigarettes forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited cigarettes.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of cigarettes or flavored tobacco product under this section was made, to redeem any vending machine or receptacle seized with such cigarettes or flavored tobacco product, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter seven of title seventeen or subchapter one of chapter two of title twenty of the code of the preceding municipality and the costs incurred in such proceeding.

(e) For purposes of this section, a flavored tobacco product means a flavored tobacco product, flavored electronic cigarette or flavored e-liquid.

§ 11-4025 Seizure and forfeiture of untaxed tobacco products. (a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs of the city designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, discovers any tobacco products subject to any tax provided by chapter thirteen of this title, and upon which the tax has not been paid, he or she is hereby authorized and empowered forthwith to seize and take possession of such tobacco products, together with any vending machine or receptacle in which such tobacco products are held for sale. Such tobacco products, vending machine or receptacle seized by such police officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized tobacco products and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person

from whom the seizure is made, or the owner of such seized tobacco products, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his or her own motion release the seized tobacco products, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Tobacco products forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that tobacco products that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the tobacco products forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such cigarettes, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited tobacco products.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of tobacco products under this section was made, to redeem any vending machine or receptacle seized with such tobacco products, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter seven of title seventeen or subchapter one of chapter two of title twenty of the code of the preceding municipality and the costs incurred in such proceeding.

§ 11-4026 Seizure and forfeiture of taxed tobacco products sold or possessed by unlicensed retail or wholesale dealers other than flavored tobacco products subject to seizure under section 11-4024 of this chapter.

(a) Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer employed by the department of finance, including but not limited to the sheriff, undersheriff or deputy sheriffs of the city designated as peace officers in subdivision two of section 2.10 of the criminal procedure law, discovers any tobacco products, other than flavored tobacco products, subject to any tax provided by chapter thirteen of this title, and upon which the tax has been paid, but such tobacco products are sold, offered for sale or possessed by a person in violation of section 11-1303 of this code or section 17-703 or 20-202 of the code of the preceding municipality, he or she is hereby authorized and empowered forthwith to seize and take possession of such tobacco products, together with any vending machine or receptacle in which such tobacco products are held for sale. Such tobacco products, vending machine or receptacle seized by such police

officer or such peace officer shall be turned over to the commissioner of finance.

(b) The seized tobacco products and any vending machine or receptacle seized therewith, but not the money contained in such vending machine or receptacle, shall thereupon be forfeited to the city, unless the person from whom the seizure is made, or the owner of such seized tobacco products, vending machine or receptacle, or any other person having an interest in such property, shall within ten days of such seizure, apply to the commissioner of finance for a hearing to determine the propriety of the seizure, or unless the commissioner of finance shall on his or her own motion release the seized tobacco products, vending machine or receptacle. After such hearing the commissioner of finance shall give notice of his or her decision to the petitioner. The decision of the commissioner shall be reviewable for error, illegality, unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules.

(c) The commissioner of finance may, within a reasonable time after the forfeiture to the city of such vending machine or receptacle under this section, upon publication of a notice to such effect for at least five successive days, in a newspaper published or circulated in the city, sell such forfeited vending machine or receptacle at public sale and pay the proceeds into the general fund of the city. Such seized vending machine or receptacle may be sold prior to forfeiture if the owner of the seized property consents to the sale. Tobacco products forfeited to the city under this section shall be destroyed or used for law enforcement purposes, except that tobacco products that violate, or are suspected of violating, federal trademark laws or import laws shall not be used for law enforcement purposes. If the commissioner determines the tobacco products forfeited under this section may not be used for law enforcement purposes, the commissioner of finance must, within a reasonable time after the forfeiture to the city of such tobacco products, upon publication of a notice to such effect for at least five successive days, prior to destruction, in a newspaper published or circulated in the city, destroy such forfeited tobacco products.

(d) In the alternative, the commissioner of finance, on reasonable notice by mail or otherwise, may permit the person from whom a seizure of tobacco products under this section was made, to redeem any vending machine or receptacle seized with such tobacco products, or may permit the owner of any such vending machine or receptacle to redeem the same, upon the payment of any civil penalty imposed pursuant to chapter seven of title seventeen or subchapter one of chapter two of title twenty of the code of the preceding municipality and the costs incurred in such proceeding.

## Title 12 - Personnel and Labor

§ 12-101 Office of payroll administration. There shall be within the comptroller's office an office of payroll administration which shall:

1. Support the implementation of a computerized payroll management system;

2. Maintain the integrity and accuracy of the payroll system;

3. Develop uniform procedures for payroll processing and development;

4. Distribute and account for payroll and administer payroll deductions; and

5. Render services to, and receive information and assistance from, public corporations upon such terms and conditions as may be agreed to by the office and each such corporation.

All city agencies shall cooperate with the office as may be necessary and proper to ensure efficient operation of the payroll management system.

§ 12-102 Executive director; staff. The comptroller shall appoint an executive director of payroll administration. Within the appropriations therefor, the office shall employ such other officers and employees as may be required to perform its duties.

## Title 13 - Reserved

## Title 14 - Police

§ 14-101 Definitions. As used in this title, the following terms have the following meanings:

1. Civil enforcement. The term "civil enforcement" means the issuance of a civil summons.

2. Civil summons. The term "civil summons" means a civil notice of violation.

3. Commissioner. The term "commissioner" means the commissioner of the department.

4. Criminal enforcement. The term "criminal enforcement" means the charging of a misdemeanor or violation.

5. Criminal summons. The term "criminal summons" means an appearance ticket issued by the department pursuant to article one hundred fifty of the criminal procedure law that is an accusatory instrument pursuant to article one hundred of the criminal procedural law, and returnable to the criminal court.

6. Department. The term "department" means the police department of the city of New York.

7. Desk appearance ticket. The term "desk appearance ticket" means an appearance ticket issued by the department pursuant to article one hundred fifty of the criminal procedure law that is not an accusatory instrument pursuant to article one hundred of the criminal procedure law.

8. Specified unlawful act. The term "specified unlawful act" means an act that violates any of the following provisions: subdivision b of section 10-125 of the code of the preceding municipality, subdivision one of section 16-118 of the code of the preceding municipality, subdivision six of section 16-118 of the code of the preceding municipality with respect to the act of public urination, subdivision a of section 24-218 of the code of the preceding municipality, section 18-146 of the code of the preceding municipality, section 18-147 of the code of the preceding municipality, and rules and regulations of the department of parks and recreation described in paragraph nine of subdivision a of section five hundred thirty-three of the charter of the preceding municipality.

§ 14-102 Composition of force. Until otherwise provided by the mayor, upon the recommendation of the commissioner, the police force in the police department, shall consist of the following ranks of members, to wit:

1. Captains of police, not exceeding in number one to each fifty of the total number of police officers, in addition to the number detailed to act as inspectors;

2. Lieutenants of police, not exceeding four in number to each fifty of the total number of police officers;

3. Sergeants not exceeding six in number to each fifty police officers;

4. Surgeons of police, not exceeding forty in number, one of whom shall be chief surgeon;

5. A veterinarian;

6. Police officers to the number of seven thousand eight hundred thirty-nine.

§ 14-103 Detective bureau. a. The commissioner shall organize and maintain a bureau for detective purposes to be known as the detective bureau and shall, from time to time, detail to service in said bureau as many members of the force as the commissioner may deem necessary and may at any time revoke any such detail.

b. Of the members of the force so detailed the commissioner may designate: (1) police officers not exceeding two hundred eighty in number, as detectives of the first grade, who while performing duty in such bureau and while so designated as detectives of the first grade, shall be paid the same salary as lieutenants; and (2) a certain number of police officers, as detectives of the second grade, who while performing duty in such bureau and while so designated as detectives of the second grade, shall be paid the same salary as sergeants; and a certain number of police officers as detectives of the third grade, who while performing duty in such bureau and while so designated as detectives of the third grade shall be paid such salary as may be determined by the mayor. Any person who has received permanent appointment as a police officer and is temporarily assigned to perform the duties of a detective shall, whenever such assignment exceeds eighteen months in duration, be appointed as a detective and receive the compensation ordinarily paid to a detective performing such duties.

c. The commissioner may designate lieutenants as commanders of detective squads, and sergeants as supervisors of detective squads, who while performing duty in such bureau and while so designated as commanders of detective squads or supervisors of detective squads shall be paid such salary as may be determined by the mayor.

d. Any member of the force detailed to such bureau while so detailed shall retain his or her rank in the force and shall be eligible for promotion the same as if serving in the uniformed force, and the time during which he or she serves in such bureau shall count for all purposes as if served in his or her rank or grade in the uniformed force.

e. The commissioner may at his or her pleasure revoke any designation made pursuant to the provision of this section after complying with the provisions of section seventy-five of the civil service law.

§ 14-104 Juvenile bureau. a. There shall be a bureau in the department organized and maintained for the prevention of crime and delinquency among minors and for the performance of such other duties as the commissioner may assign thereto.

b. Any member of the force assigned to such juvenile bureau shall retain his or her rank and pay in the force and shall be eligible for promotion as if serving in the uniformed force and the time served in such bureau shall count for all purposes as if served in his or her rank or grade in the uniformed force of the department.

§ 14-105 Bureau of taxis, limousines and liveries. The purpose of the bureau of taxis, limousines and liveries shall be the continuance, further development and improvement of taxi, limousine and livery service in the city of Staten Island.

It shall be the further purpose of the bureau, consonant with the promotion and protection of the public comfort and convenience to adopt and establish an overall public transportation policy governing taxi, coach, limousine and wheelchair accessible van services as it relates to the overall public transportation network of the city; to require the filing of rates, standards of service, standards of insurance and minimum coverage; standards for driver safety; standards for equipment safety and design; standards for noise and air pollution control; and to set standards and criteria for the licensing of vehicles, drivers and chauffeurs, owners and operators engaged in such services.

§ 14-106 Jurisdiction, powers and duties of the bureau. 1. The jurisdiction, powers and duties of the bureau shall include the regulation and supervision of the business and industry of transportation of persons by licensed vehicles for hire in the city.

2. Such regulations and supervision shall extend to:

(a) The supervision of rates to be charged and collected.

(b) The regulation and supervision of standards and conditions of service.

(c) The revocation and suspension of licenses for vehicles, other than licenses issued pursuant to state law, provided, however, that taxicab licenses represented by medallions heretofore issued shall in all respects remain valid in accordance with their terms and transferable according to law.

3. The bureau or an administrative tribunal which may be established by the police commissioner to adjudicate charges of violations of provisions of the administrative code, rules and regulations promulgated thereunder and public complaints of discrimination or overcharging, shall have the power to enforce its decisions and orders imposing civil penalties, not to exceed ten thousand dollars for each respondent, for violations relating to unlicensed vehicles for hire and unlicensed drivers of vehicles for hire and for violations relating to the operation of commuter van services without authorization and the operation of unlicensed commuter vans and unlicensed drivers of commuter vans pursuant to provisions of the administrative code.

Before a judgment based upon a default may be so entered the bureau or administrative tribunal shall have first notified the respondent by first class mail in such form as the bureau may direct (a) of the default and order and the penalty imposed; (b) that a judgment will be entered in the civil court of the city; and (c) that entry of such judgment may be avoided by requesting a stay of default for good cause and either requesting a hearing or entering a plea pursuant to the rules of the bureau or administrative tribunal within thirty days of the mailing of such notice.

## Title 15 - Fire Prevention and Control

§ 15-101 Definitions; bureaus, divisions and offices. 1. For the purposes of this title the following terms shall have the following meanings:

(a) "Commissioner" shall mean the fire commissioner.

(b) "Department" shall mean the fire department.

2. In addition to such other bureaus, divisions and offices as the commissioner may organize pursuant to section eleven hundred two of the charter of the preceding municipality, there shall be in the department:

(a) A fire bureau in the charge of the chief of the department which shall have charge of the extinguishment of fires and the necessary and incidental protection of life and property in connection therewith.

In such bureau there shall be a bureau of fire prevention and such bureau shall be in the charge of a member of the uniformed force of the department, of a rank above that of captain, to be designated by the commissioner. Such bureau shall perform the duties and exercise the powers of the commissioner in relation to (1) combustibles, chemicals, explosives, flammables, or other dangerous substances, articles, compounds or mixtures, (2) the prevention of fires or danger to life or property therefrom, excluding provisions relating to structural conditions and (3) protection against fire and panic, obstruction of aisles, passageways and means of egress, standees, fire protection and fire extinguishing appliances, and fire prevention in licensed places of assembly. In the performance of their official duties, the uniformed and civilian members of the bureau of fire prevention shall have the powers and perform the duties of peace officers, but their power to make arrests and serve process in criminal actions shall be restricted to cases arising under laws relating to (1) the manufacture, storage, sale, transportation or use of combustibles, chemicals, explosives, flammables or other dangerous substances, articles, compounds or mixtures and the control of fire hazards, (2) the prevention of fires or danger to life or property therefrom, excluding provisions relating to structural conditions and (3) fire perils.

(b) A chief and deputy chief fire marshal, appointed by the commissioner, who shall be members of the department.

3. Notwithstanding any inconsistent provision of any general, special or local law, or rule or regulation, a chief of the department shall not serve in any other capacity to the department during his or her term of office of chief. Any person violating the provisions of this section shall be deemed to have vacated the office of chief so held.

§ 15-102 Commissioner. The head of the fire department shall be the commissioner. The mayor may designate the chief of the fire department to serve as commissioner, and shall exercise the powers and duties of commissioner and shall receive the salary of the commissioner. While serving as commissioner, the chief shall forfeit none of his or her pension rights and privileges as chief or his or her civil service status.

The commissioner may appoint deputies, one of whom may perform all the duties and exercise all the powers of the commissioner except appointment or promotion, detail or dismissal of any member of the uniformed force when authorized by instrument in writing to be filed in the offices of the mayor and the comptroller.

The commissioner shall be the treasurer of the department and shall file in the office of the comptroller a bond for the faithful performance of his or her duties as treasurer.

§ 15-103 Powers. The commissioner shall have sole and exclusive power and perform all duties for the government, discipline, management, maintenance and direction of the fire department and the premises and property, however the commissioner shall provide written notice with supporting documentation at least forty-five days prior to the permanent closing of any firehouse or permanent removal or relocation of any fire fighting unit to the council members whose districts are served by such facility and to the clerk of the council. The term "permanent" shall mean a time period in excess of six months.

The department shall have the sole and exclusive power and authority to extinguish fires at any place within the jurisdiction of the city and still have power and authority to extinguish fires upon any vessel in the port of New York or upon any dock, wharf, pier, warehouse or other structure bordering or adjacent to such port.

The commissioner shall have sole and exclusive jurisdiction over the approval of the installation of all containers for combustibles, chemicals, explosives, inflammable or other dangerous substances, except storage tanks for oilburning equipment.

The commissioner shall have the sole and exclusive power to designate and fix the location of all fire alarm telegraph, signal and alarm stations in the city and to control the same for the purpose of the department; except the commissioner shall give forty-five days notice to council members whose districts are served by such equipment and to the city clerk in the case of removal.

§ 15-104 Enforcement of fire laws. 1. The commissioner shall have the power and it shall be his or her duty to enforce all laws and the rules and regulations with respect to:

(a) the manufacture, storage, sale, transportation or use of combustibles, chemicals or dangerous substances;

(b) investigation of the cause and origin of fires and suppression of arson; and

(c) the prevention of fires or danger to life or property.

2. The commissioner shall have the power to cause any building, structure, tunnel, vessel or premises to be inspected for fire hazards by an officer or employee of the department; and to inspect and test any automatic or other fire alarm system or fire extinguishing equipment.

3. The commissioner shall have the power and it shall be his or her duty to order in writing the remedying of any condition in violation of any regulation which he or she is empowered to enforce. The commissioner may take proceedings for the enforcement of any order of the commissioner which is not complied with within the time fixed in the order for such compliance to be enforced. Every order, requirement, decision or determination of the commissioner shall be in writing.

4. The commissioner and his or her deputies and such other officers or employees of the department as are authorized by the commissioner may without fee or hindrance enter and inspect all buildings, premises, vessels, structures and all underground passages of every sort in the city or in the port of New York for compliance with provisions of law or rules and regulations enforced by the department. Any refusal to permit such entry or inspection shall be triable by a judge and punishable by not more than thirty days imprisonment or by a fine of not more than fifty dollars, or both.

§ 15-105 Other officer. No member of the uniformed force of the fire department shall accept any additional place of public trust or civil emolument.

The chief of the fire department shall not serve in any other capacity to the department during his or her term of office or shall be deemed to have vacated the office of chief.

# Title 16 - Sanitation

## Chapter 1
## GENERAL

§ 16-101 Definitions. When used in this title the following terms shall have the following meanings:

1. "Department" shall mean the department of sanitation.
2. "Commissioner" shall mean the commissioner of sanitation.
3. "Street" includes street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert and crosswalk, and every class of road, square and place, and all parkways and through vehicular park drives except a road within any park or a wharf, pier, bulkhead, or slip by law committed to the custody, and control of the department of ports and terminals.

§ 16-102 Commissioner. The head of the sanitation department shall be the commissioner.

§ 16-103 Powers and duties of the commissioner. 1. The commissioner shall have charge and control of and be responsible for all those functions and operations of the city relating to the cleanliness of the streets and the disposal of waste, including, without limitation, the following:

(a) the sweeping, cleaning, sprinkling, flushing, washing and sanding of the streets;

(b) the removal and disposition of ashes, street sweepings, garbage, refuse, rubbish and waste;

(c) the removal of ice and snow from the streets;

(d) the removal of encumbrances from the streets and the storage or disposal of such encumbrances, except that the mayor may provide by regulation that the removal and storage of household effects or other chattels shall be a responsibility of the department of general services and contracting;

(e) plans, design, construction, operation, repair, maintenance, enlargement and regulation of the use of incinerators, landfills and other plants, facilities and equipment; and

(f) recovery and reuse of recyclable material.

2. The commissioner may adopt regulations specifying the kind of ashes, garbage, refuse, rubbish or other material or substance that will be collected by the city, the time when it will be collected and the place at which it shall be deposited for collection.

3. The regulations shall be enforced by order of the commissioner. Such order shall be addressed to the owner or owners, lessees or occupants of the building, structure, enclosure, vessel, place or premises affected thereby. It shall not be necessary to designate such owner or owners, lessees or occupants by name, however the premises shall be designated in the address so that it may be readily identified.

§ 16-104 Duties and obligations of property owner. The owner of any property shall keep any vacant lot or lots in a clean and sanitary manner and free of debris and other litter at the owner's expense. In the event that an owner of property fails to comply with these provisions, or rules and regulations, the department may provide for cleaning of a vacant lot at the expense of the property owner.

## Chapter 2
## SOLID WASTE RECYCLING

§ 16-301 Short title. Sections 16-301 through 16-324 of this title shall be known and may be cited as the "City of Staten Island Recycling Law".

§ 16-302 Declaration of policy. It is hereby declared to be the public policy of the city to reduce environmental pollution and dangers to health, to decrease the demand for scarce landfill space, to minimize the size and cost of the proposed resource recovery program, and to

encourage the conservation of valuable natural resources and energy. It is the policy of the city to promote the recovery of materials from the city of Staten Island solid waste stream for the purpose of recycling such materials and returning them to the economy. This title shall be liberally construed in order to effectuate the purposes set forth in this section.

§ 16-303 Definitions. When used in this title:

1. "Architectural paint" means interior and exterior architectural coatings, including paints and stains purchased for commercial or residential use, but does not include architectural coatings purchased for industrial use or for use in the manufacture of products.

2. "Organic waste" means any material found in the waste stream that can be broken down into, or otherwise become part of, usable compost, such as food scraps, soiled paper, and plant trimmings. As determined by the commissioner, such term may also include disposable plastic food service ware and bags that meet the ASTM International standard specifications for compostable plastics, but shall not include liquids and textiles.

3. "Department-managed solid waste" means all solid waste that the department and its contractors collect, all solid waste that the department receives for free disposal, all solid waste collected for recycling or reuse through special events or programs promoted, operated or funded by the department, and all solid waste diverted from collection by the department that is accepted through non-department infrastructure for recycling or reuse and counted towards the department's recycling goals as set forth in subdivision a of section 16-305 of this chapter.

4. "Household" means a single dwelling or a residential unit within a multiple dwelling, hotel, motel, campsite, ranger station, public or private recreation area, or other residence.

5. "Household and institutional compostable waste" means any compostable waste, excluding yard waste, in or otherwise destined for any waste stream collected by the department.

6. "Household hazardous waste" means:

a. any household waste that is ignitable, corrosive, reactive or toxic and that, but for its point of generation, would be a hazardous waste under part three hundred seventy-one of title six of the New York code, rules and regulations, as may be amended from time to time, and includes all pesticides, as defined in article thirty-three of the environmental conservation law, and hazardous waste, as defined in section 27-0901 of the environmental conservation law, as such laws may be amended from time to time; and

b. any other household waste that the commissioner determines, by rule, to be hazardous and require special handling.

7. "Post-collection separation" means the dividing of solid waste into some or all of its component parts after the point of collection.

8. "Post-consumer material" means those products generated by a business or a consumer which have served their intended end uses, and which have been separated or diverted from solid waste for the purposes of collection, recycling and disposition.

9. "Private carter" means any person required to be licensed or permitted pursuant to chapter one of title sixteen-A of the code of the preceding municipality.

10. "Publicly accessible textile drop-off bin" means any enclosed container that allows for members of the public to deposit textiles into such container for reuse or recycling in accordance with the textile

reuse and recycling program established by section 16-310.1 of this chapter.

11. "Recyclable materials" means solid waste that may be separated, collected, processed, marketed and returned to the economy in the form of raw paper, plastic, yard waste and any other solid waste required to be recycled or composted pursuant to this chapter, solid waste collected for recycling or reuse through special events or programs promoted, operated or funded by the department, and solid waste accepted through non-department infrastructure for recycling or reuse.

12. "Recycled" or "recycling" means any process by which recyclable materials are separated, collected, processed, marketed and returned to the economy in the form of raw materials or products.

13. "Recycling center" means any facility operated to facilitate the separation, collection, processing or marketing of recyclable materials for reuse or sale.

14. "Recycling district" means any borough or smaller geographic area the commissioner deems appropriate for the purpose of implementing this chapter.

15. "Rigid plastic container" means any plastic container having a semi-flexible or inflexible finite shape or form that is capable of maintaining its shape while holding other products and is designed to hold food, beverages, and consumer household products, including, but not limited to, the following types of containers: plastic bottles, plastic jugs, plastic tubs, plastic trays, plastic cups, plastic buckets, plastic crates and plastic flower pots, and any other rigid plastic material that the commissioner may designate by rule, but not including containers made of polystyrene foam.

16. "Solid waste" means all putrescible and non-putrescible materials or substances, except as described in paragraph c of this subdivision, that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to, garbage, refuse, industrial and commercial waste, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal.

a. A material is discarded if it is abandoned by being:

i. disposed of;

ii. burned or incinerated, including being burned as a fuel for the purpose of recovering useable energy; or

iii. accumulated, stored, or physically, chemically or biologically treated, other than burned or incinerated, instead of or before being disposed of.

b. A material is disposed of if it is discharged, deposited, injected, dumped, spilled, leaked, or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

c. The following are not solid waste for the purpose of this chapter:

i. domestic sewage;

ii. any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment, except (A) any material that is introduced into such system in order to avoid the provisions of this chapter or the state regulations promulgated to regulate solid waste management facilities pursuant to 6 NYCRR part 360 or (B) food waste;

iii. industrial wastewater discharges that are actual point source discharges subject to permits under article seventeen of the environmental conservation law; industrial wastewaters while they are being

collected, stored, or treated before discharge and sludges that are generated by industrial wastewater treatment are solid wastes;

iv. irrigation return flows;

v. radioactive materials that are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011 et seq.;

vi. materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process;

vii. hazardous waste as defined in section 27-0901 of the environmental conservation law; and

viii. regulated medical waste or other medical waste as described in section 16-120.1 of this title.

17. "Source separation" means the dividing of solid waste into some or all of its component parts at the point of generation.

18. "Yard waste" means leaves, grass clippings, garden debris, and vegetative residue that is recognizable as part of a plant or vegetable, small or chipped branches, and similar material.

## Chapter 3
## CITYWIDE RECYCLING PROGRAM

§ 16-305 Recycling of department-managed solid waste. 1. a. The following recycling percentage goals are established for the recycling of department-managed solid waste:

i. by July first, two thousand eleven, sixteen percent of department-managed solid waste;

ii. by July first, two thousand thirteen, nineteen percent of department-managed solid waste;

iii. by July first, two thousand fourteen, twenty-one percent of department-managed solid waste;

iv. by July first, two thousand sixteen, twenty-four percent of department-managed solid waste;

v. by July first, two thousand eighteen, twenty-seven percent of department-managed solid waste;

vi. by July first, two thousand nineteen, thirty percent of department-managed solid waste; and

vii. by July first, two thousand twenty, thirty-three percent of department-managed solid waste.

b. In addition, the following recycling goals are established for curbside and containerized waste collected by the department:

i. By July first, two thousand eleven, sixteen percent of curbside and containerized waste collected by the department;

ii. By July first, two thousand thirteen, eighteen percent of curbside and containerized waste collected by the department;

iii. By July first, two thousand fourteen, nineteen percent of curbside and containerized waste collected by the department;

iv. By July first, two thousand sixteen, twenty-one percent of curbside and containerized waste collected by the department;

v. By July first, two thousand eighteen, twenty-three percent of curbside and containerized waste collected by the department;

vi. By July first, two thousand nineteen, twenty-four percent of curbside and containerized waste collected by the department; and

vii. By July first, two thousand twenty, twenty-five percent of curbside and containerized waste collected by the department.

2. The commissioner shall adopt and implement rules designating at least six recyclable materials, including plastics to the extent

required in subdivision three of this section and yard waste to the extent required in section 16-308 of this chapter and organic waste to the extent required in section 16-308.1 of this chapter, contained in department-managed solid waste and requiring households to source separate such designated materials.

3. a. Prior to commencing delivery of department-managed recyclable materials to the designated recycling processing facility at the South Brooklyn Marine Terminal, the commissioner shall designate as recyclable materials, and require the source separation of, rigid plastic containers.

b. If the commissioner, in his or her discretion, determines that the cost to the city of recycling rigid plastic containers required to be designated as recyclable materials pursuant to paragraph a of this subdivision is not reasonable in comparison with the cost of recycling only metal, glass and plastic and have been designated as recyclable materials, the commissioner shall within ten business days notify and provide documentation to the council of the factors relied upon to make such determination and shall not be required to designate any such rigid plastic containers as recyclable materials.

c. If the commissioner determines that the cost to the city of recycling rigid plastic containers is not reasonable in comparison with the cost of recycling only metal, glass and plastic that have been designated as recyclable materials, the commissioner shall annually reevaluate the cost to the city of designating such rigid plastic containers as recyclable materials, and shall annually make a new determination as to whether the cost of designating such containers as recyclable materials is reasonable in comparison with the cost of recycling only metal, glass and plastic that have been designated as recyclable materials and shall report such evaluations to the council. The department shall not promulgate rules designating rigid plastic containers as recyclable materials, and need not conduct outreach or education relating thereto if, pursuant to paragraph b of this subdivision, the commissioner determines that the cost to the city of recycling rigid plastic containers is not reasonable in comparison with the cost of recycling only metal, glass and plastic that have been designated as recyclable materials.

d. Immediately following the promulgation of rules designating rigid plastic containers as recyclable materials, the department shall undertake outreach and education, in cooperation with any other agency or entity designated for that purpose by the commissioner, to inform residents of such new designation and to provide instruction on compliance with the requirements of this subdivision and the rules promulgated pursuant thereto.

4. The commissioner shall adopt and implement rules establishing procedures requiring the placement of the designated materials at the curbside, in specialized containers, or in any other manner the commissioner determines, to facilitate the collection of such materials in a manner that enables them to be recycled. Under such rules, no person shall be liable for incorrectly placing a non-designated rigid plastic container in the recycling stream.

5. Where the department provides solid waste collection services to a building containing at least four and no more than eight dwelling units, the commissioner shall adopt and implement rules requiring the owner, net lessee or person in charge of such building to:

a. provide for the residents, where practicable, a designated area and, where appropriate, containers in which to store the source sepa-

rated or other designated recyclable materials to be collected by the department; and

b. inform all residents of the requirements of this chapter and the rules promulgated pursuant thereto by, at a minimum, posting instructions on source separation in or near the designated recycling area and making available to each resident at the inception of a lease, where applicable, a department-issued guide to recycling, which shall be made available to the owner, net lessee or person in charge of such building by the department pursuant to section 16-315 of this chapter in print form or on the department's website, or in an alternative guide containing similar information to the guide required by section 16-315 of this chapter.

If reasonably accessible space for the storage of source separated or other designated recyclable materials is not available in such building, and such space is available behind the building's property line, such space behind the property line may be designated as the area for the storage of source separated or other designated recyclable materials. If no such space is available, the owner, net lessee or person in charge of such building shall post instructions on recycling and source separation in or near a designated area that is visible to all residents in the building.

With respect to solid waste generated by households in the aforesaid buildings, the obligations of an owner, net lessee or person in charge of such building under this chapter shall be limited to those set forth in this subdivision and subdivisions four and seven of this section or rules promulgated pursuant to such subdivisions.

6. Where the department provides solid waste collection services to a building containing nine or more dwelling units, the commissioner shall adopt and implement rules requiring the owner, net lessee or person in charge of such building to:

a. provide for the residents a designated area and, where appropriate, containers in which to store the source separated or other designated recyclable materials to be collected by the department;

b. inform all residents of the requirements of this chapter and the rules promulgated pursuant thereto by, at a minimum, posting instructions on source separation in or near the designated recycling area, and making available to each resident at the inception of a lease, a department-issued guide to recycling, which shall be made available to the owner, net lessee or person in charge of such building by the department pursuant to section 16-315 of this chapter in print form or on the department's website, or in an alternative guide containing similar information to the guide required by section 16-315 of this chapter; and

c. remove non-designated materials from the containers of designated source separated recyclable materials before such containers are placed at the curbside for collection and ensure that the designated materials are placed at the curbside in the manner prescribed by the department.

With respect to solid waste generated by households in the aforesaid buildings, the obligations of an owner, net lessee or person in charge of such building under this chapter shall be limited to those set forth in this subdivision and subdivisions four and seven of this section or rules promulgated pursuant to such subdivisions.

7. The commissioner shall adopt and implement rules for any building containing four or more dwelling units in which the amount of designated materials placed out for collection is significantly less than what can reasonably be expected from such building. These rules shall require

residential generators, including tenants, owners, net lessees or persons in charge of such building to use transparent bags or such other means of disposal the commissioner deems appropriate to dispose of solid waste other than the designated recyclable materials. Upon request of the owner, net lessee or person in charge of such building, and if the commissioner determines that such owner, net lessee or person in charge of such building has complied with this subdivision, subdivision four of this section and, as applicable, subdivision five or subdivision six of this section or rules promulgated pursuant to such subdivisions and that the amount of designated materials placed out for collection remains significantly less than what can reasonably be expected from such building, the department may develop a schedule to conduct random inspections to facilitate compliance with the provisions of this chapter by tenants of such building, provided that lawful inspections may occur at reasonable times without notice to ensure compliance by the tenants, owner, net lessee or person in charge of such building.

8. a. In calculating the extent to which the department has met the recycling percentage goals set forth in paragraph a of subdivision one of this section, the department shall include in its calculations all curbside and institutional recycling it collects, including materials collected from households, schools, not-for-profit institutions and city agencies, and all recyclable materials collected as part of the public space recycling program pursuant to section 16-310 of this chapter, and may include yard waste collected pursuant to section 16-308 of this chapter and any other material collected for composting pursuant to this chapter, Christmas trees collected pursuant to section 16-309 of this chapter, clothing and textiles donated or collected pursuant to section 16-310.1 of this chapter, household hazardous waste diverted pursuant to section 16-310.3 of this chapter, rechargeable batteries collected pursuant to chapter four of title eleven of the code of the preceding municipality, beverage containers returned within the city pursuant to title ten of article twenty-seven of the environmental conservation law, electronic waste collected within the city or otherwise diverted from the city's waste stream, including such waste collected or diverted pursuant to title twenty-six of article twenty-seven of the environmental conservation law, and plastic bags collected within the city or otherwise diverted from the city's waste stream, including such plastic bags collected or diverted pursuant to title twenty-seven of article twenty-seven of the environmental conservation law. Only recyclable materials specifically enumerated in this paragraph shall be counted for purposes of calculating the extent to which the department has met the recycling percentage goals set forth in paragraph a of subdivision one of this section.

b. In calculating the extent to which the department has met the recycling percentage goals set forth in paragraph b of subdivision one of this section, the department shall include in its calculations all curbside and institutional recycling it collects, including materials collected from households, schools, not-for-profit institutions and city agencies, and all recyclable materials collected as part of the public space recycling program pursuant to section 16-310 of this chapter.

c. In calculating the extent to which the department has met the recycling percentage goals set forth in paragraphs a and b of subdivision one of this section, the department shall not include recycling of abandoned vehicles or recycling from lot cleaning operations, asphalt and mill tailings, construction and demolition debris or other commercial recycling programs. The commissioner shall not designate any such mate-

rials as recyclable materials under this section for purposes of calculating the extent to which the department has met such recycling percentage goals.

d. In calculating the percent of the department-managed solid waste stream recycled in connection with the percentage goals set forth in paragraph a of subdivision one of this section, the department shall ensure that any quantity of material counted as recycled must be fully included in the calculation of the city's total department-managed solid waste stream.

e. All data used to make calculations pursuant to paragraphs a and b of this subdivision shall be made available on the department's website in raw form disaggregated by material type and using a non-proprietary format on a monthly basis, or, if such data is not generated by the department, within one month from the date that the department receives reports of such information.

9. In the event that the department does not meet any recycling percentage goal set forth in paragraphs a or b of subdivision one of this section by the dates specified therein, the department shall, within sixty days of the date for meeting such goal, expand recycling outreach and education and shall take such other appropriate measures including, but not limited to, directing such outreach and education to the neighborhoods and community districts in which recycling diversion rates fall below the median city recycling diversion rate and consulting with the council to explore additional measures to meet the recycling percentage goals set forth in such subdivision. In expanding recycling outreach and education, the department may work with other agencies or entities designated for that purpose by the commissioner.

10. In the event that the department is unable to achieve two consecutive recycling percentage goals set forth in paragraphs a and b of subdivision one of this section by the dates specified therein, in addition to the requirements of subdivision nine of this section, the commissioner shall retain a special advisor, who shall be selected by the mayor and the speaker, provided that the commissioner need not retain such special advisor more than once every three years. Within one hundred twenty days of such retention, such adviser shall submit a report to the mayor and council recommending additional measures that may be taken by the city following such report in order to meet such recycling percentage goals.

§ 16-305.1 Weekly collection of designated recyclable materials. 1. Weekly collection of designated recyclable materials shall be maintained in all local service delivery districts.

2. Effective July first, two thousand nine, and notwithstanding any inconsistent provision of this chapter, the department shall be authorized, by written order of the commissioner, to implement and maintain alternate week collection of designated recyclable materials in all local service delivery districts, provided that the department may, by written order of the commissioner, provide for more frequent collection of designated recyclable materials in designated local service delivery districts. Any such written order of the commissioner implementing alternate week collection shall expire no later than March thirty-first, two thousand ten.

3. For purposes of this section "designated recyclable materials" shall mean solid waste that has been designated by the commissioner as recyclable pursuant to section 16-305, section 16-307, or section 16-308.1 of this chapter.

4. Nothing in this section shall be construed to require collection of designated recyclable materials in such parts of the city or during such times of the year that such materials are not otherwise collected.

§ 16-306 Private carter-collected waste. 1. The commissioner shall adopt and implement rules designating recyclable materials that constitute in the aggregate at least one-half of all solid waste collected by private carters, and additional materials if the commissioner determines that economic markets exist for them. Pursuant to subdivision two of this section, such rules shall require generators of private carter-collected waste to source separate some or all of the designated materials and to arrange for lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters of such source separated materials. With regard to designated materials that are not required by such rules to be source separated, generators of private carter-collected waste may source separate these designated materials and, in any event, shall arrange for their lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters. If a generator of private carter-collected waste has source separated the designated materials in accordance with the rules and arranged for the lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters of such source separated materials and, with regard to designated materials that are not required by such rules to be source separated, arranged for lawful collection for recycling, reuse or sale for reuse by private carters or persons other than private carters, such arrangement shall constitute an affirmative defense to any proceeding brought against the generator pursuant to section 16-324 of this title.

2. (a) The rules promulgated pursuant to subdivision one of this section shall require that generators of waste collected by businesses required to be licensed pursuant to section 16-505 of the code of the preceding municipality source separate the designated materials in such manner and to such extent as the commissioner determines to be necessary to minimize contamination and maximize the marketability of such materials. However, in promulgating such rules the commissioner shall not require source separation of a material unless the commissioner has determined that an economic market exists for such material. For the purpose of this section, the term "economic market" refers to instances in which the full avoided costs of proper collection, transportation and disposal of source separated materials are equal to or greater than the cost of collection, transportation and sale of said materials less the amount received from the sale of said materials.

(b) (i) Any designated carter that collects source separated designated materials in a commercial waste zone pursuant to section 16-1002 of the code of the preceding municipality shall provide for the collection of, and ensure the continued separation of, designated materials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials in accordance with the rules of the department and the terms of any agreement entered into pursuant to section 16-1002 of the code of the preceding municipality under which such designated carter is providing such service.

(ii) Any person registered by the business integrity commission to remove, collect, or dispose of trade waste generated in the course of operation of such person's business pursuant to subdivision b of section 16-505 of the code of the preceding municipality shall provide for the collection of, and ensure the continued separation of, designated mate-

rials that have been source separated, provide for the separation of all other designated materials, and provide for recycling of all the designated materials in accordance with the rules promulgated by the business integrity commission pursuant to this section and subject to the penalties provided in subdivision a of section 16-515 of the code of the preceding municipality.

(c) The commissioner and the chair of the business integrity commission shall have the authority to issue notices of violation for any violation of any rules promulgated pursuant to this section and such notices of violation shall be returnable in a civil action brought in the name of the commissioner or the chair of the business integrity commission before the environmental control board which shall impose a penalty not to exceed ten thousand dollars for each such violation.

3. The department shall complete a study of commercial recycling in the city no later than January first, two thousand twelve. Such commercial recycling study shall focus on the putrescible portion of the commercial waste stream, and shall include, but need not be limited to, the following: (a) an integration of all data on commercial waste in the city collected and transported through transfer stations and recycling processors; (b) an assessment of current practices, operations and compliance with applicable local laws and rules, consistent with the scope of study set forth in the two thousand six Solid Waste Management Plan; (c) estimates of waste composition and recycling diversion rates from research conducted with respect to other jurisdictions; (d) a computer-based model to measure the amount and composition of waste generated by different commercial sectors; (e) recommendations of methods to encourage waste prevention, reuse, recycling and composting for each of the commercial sectors studied, including any recommended changes to applicable law; and (f) an assessment of the efficiency of the transportation of commercial waste within the commercial system by, among other things, mapping and monitoring routes along which commercial waste and recycling trucks travel, including long-haul carriers within and outside the city. Following completion of the commercial recycling study, the commissioner shall determine whether any additional studies are necessary in order to improve commercial recycling practices in the city and shall promptly report such determination to the mayor and the council.

4. Notwithstanding any other provision of law, nothing in this section shall be construed to (a) supersede, amend or eliminate any obligation of an awardee or designated carter, as such terms are defined in section 16-1000 of the code of the preceding municipality, to meet the requirements set forth in any applicable agreement entered into pursuant to section 16-1002 of the code of the preceding municipality, or (b) otherwise amend or supersede any term of such agreement.

§ 16-306.1 Organic waste. 1. When used in this section or section 16-324 of this chapter:

a. "Arena" means an establishment or facility that hosts live sporting or entertainment events.

b. "Capacity" means the combined capacity of facilities that are capable of accepting and processing, consistent with the terms of this section and exceeding a nominal amount, organic waste expected to be generated by and collected from designated covered establishments.

c. "Catering establishment" means any room, place or space in the city, which is used, leased or hired out for the business of serving food or beverages for a particular function, occasion or event, to which

the public is not invited or admitted and wherein music or entertainment is permitted.

d. "Covered establishment" means:

(i) any location at which a food manufacturer has a floor area of at least twenty-five thousand square feet;

(ii) any location at which a food wholesaler has a floor area of at least twenty thousand square feet;

(iii) any location at which a retail food store has a floor area of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same private carter;

(iv) arenas or stadiums having a seating capacity of at least fifteen thousand persons;

(v) any food service establishment that is part of a chain of two or more food service establishments that have a combined floor area of at least eight thousand square feet and that: (1) operate under common ownership or control; (2) are individually franchised outlets of a parent business; or (3) do business under the same corporate name, provided that the requirements of subparagraph (i) of paragraph a of subdivision three of this section shall not apply to any such food service establishment when the building or premises in which such food service establishment is located is in compliance with such requirement pursuant to paragraph h of this definition;

(vi) any location at which a food service establishment has a floor area of at least seven thousand square feet, provided that the requirements of subparagraph (i) of paragraph a of subdivision three of this section shall not apply to any such location when the building or premises containing such location is in compliance with such requirement pursuant to paragraph g of this subdivision;

(vii) any building or premises where food service establishments having a total combined floor area of at least eight thousand square feet are located and where the owner of the building or premises, or its agent, arranges or contracts with a private carter for the removal of waste from food service establishments having no less than eight thousand square feet of such building or premises, provided that any such food service establishments shall comply with the requirements of subparagraphs (ii), (iii) and (iv) of paragraph a of subdivision three of this section, but such requirements shall not apply to the owner or agent of any such building or premises;

(viii) any location at which a food preparation establishment has a floor area of at least six thousand square feet;

(ix) any catering establishment that is required to provide for the removal of waste pursuant to section 16-116 of the code of the preceding municipality whenever the anticipated attendance for any particular event is greater than one hundred persons;

(x) any food service establishments located within and providing food to one or more hotels totaling at least one hundred sleeping rooms; and

(xi) sponsors of a temporary public event.

e. "Designated area" means within a one hundred mile radius of the city.

f. "Food manufacturer" means any establishment that processes or fabricates food products from raw materials for commercial purposes, provided that it shall not include any establishment engaged solely in the warehousing, distribution or retail sale of product.

g. "Food preparation establishment" means a business that is primarily engaged in providing food or food services for a temporary, fixed time, or based on contractual arrangements for a specified period of time at locations other than such establishment's permanent place of business.

h. "Food service establishment" means any premises or part of a premises that is required to provide for the removal of waste pursuant to section 16-116 of the code of the preceding municipality where food is provided directly to the consumer, whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises. Food service establishment shall include, but not be limited to, full-service restaurants, fast food restaurants, cafes, delicatessens, coffee shops, and business, institutional or government agency cafeterias, but shall not include retail food stores, convenience stores, pharmacies, and mobile food vending units, as such term is defined in section 89.03 of the health code. Food service establishment shall also not include any premises or place of business where the sole or primary source of food is a refreshment counter where the available food is limited to items such as beverages, prepackaged items, and snacks.

i. "Food wholesaler" means any establishment primarily engaged in the wholesale distribution of groceries and related products including, but not limited to, packaged frozen food, dairy products, poultry products, confectioneries, fish and seafood, meat products, and fresh fruits and vegetables but shall not apply to establishments that handle only prepackaged, non-perishable foods.

j. "Hotel" shall have the same meaning as set forth in section 27-2004 of the housing maintenance code.

k. "In vessel composting" means a process in which organic waste is enclosed in a drum, silo, bin, tunnel, reactor, or other container for the purpose of producing compost, maintained under controlled conditions of temperature and moisture and where air-borne emissions are controlled.

l. "Organic waste" shall have the same meaning as set forth in section 16-303 of this title, except that for purposes of this section, organic waste shall not include food that is donated to a third party, food that is sold to farmers for feedstock, and meat by-products that are sold to a rendering company.

m. "Private carter" means a business licensed by the business integrity commission pursuant to title sixteen-A of the code of the preceding municipality.

n. "Retail food store" means any establishment or section of an establishment where food and food products offered to the consumer are intended for off-premises consumption, but shall exclude convenience stores, pharmacies, greenmarkets or farmers' markets and food service establishments.

o. "Sponsor of a temporary public event" means the applicant for a street activity permit pursuant to chapter one of title fifty of the rules of the city of New York, or any successor provision, for any activity on a public street, street curb lane, sidewalk or pedestrian island or plaza with an anticipated attendance of greater than five hundred persons per day where the activity will interfere with or obstruct the regular use of the location by pedestrian or vehicular traffic. Such term shall not include activities conducted pursuant to a valid film permit, demonstrations, parades or block parties.

p. "Stadium" means an establishment or facility that hosts live sporting or entertainment events.

2. The commissioner shall, on a regular basis and no less than annually, evaluate the capacity of all facilities within the designated area and the cost of processing organic waste by composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule. If the commissioner determines that there is sufficient capacity and that the cost of processing organic waste consistent with this section is competitive with the cost of disposing of organic waste by landfill or incineration, he or she shall designate by rule all covered establishments or a subset of covered establishments, based on any criteria, among such covered establishments, that generate a quantity of organic waste that would not exceed the evaluated capacity. All such designated covered establishments shall comply with the requirements of subdivision three of this section beginning no later than six months following such designation. In addition, the commissioner shall include in his or her evaluation the capacity of any facilities outside of the designated area that have arrangements or contracts with transfer stations or private carters to accept and process organic waste generated by and collected from covered establishments.

3. a. Each designated covered establishment shall:

(i) either (1) ensure collection by a private carter of all organic waste generated by such establishment for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule, (2) transport its own organic waste to a facility that provides for composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule, provided that the covered establishment first obtains a registration issued by the business integrity commission pursuant to subdivision b of section 16-505 of the code of the preceding municipality, or (3) provide for on-site in vessel composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule for some or all of the organic waste it generates on its premises, provided that it arranges for the collection or transport of the remainder of such organic waste, if any, in accordance with clause one or two of this subparagraph;

(ii) post a sign, which shall be in addition to any other sign required to be posted pursuant to this code, that states clearly and legibly the trade or business name, address, and telephone number of, and the day and time of pickup by, the private carter that collects the covered establishment's organic waste, that such covered establishment transports its own organic waste, or that such covered establishment provides for on-site processing for all of the organic waste it generates on its premises, provided that:

(1) such sign shall be prominently displayed by affixing it to a window near the principal entrance to the covered establishment so as to be easily visible from outside the building or, if this is not possible, prominently displayed inside the covered establishment near the principal entrance;

(2) catering establishments shall not be required to display on such sign the day and time of the pickup by the private carter that collects the establishment's organic waste; and

(3) this paragraph shall not apply to sponsors of temporary public events;

(iii) provide separate bins for the disposal of organic waste in any area where such organic waste is generated and disposed of; and

(iv) post instructions on the proper separation of organic waste where such instructions will be visible to persons who are disposing of organic waste, provided that this subparagraph shall not apply to sponsors of temporary public events.

b. Any covered establishment that arranges for the collection by a private carter of its organic waste pursuant to this subdivision shall not commingle such organic waste with other designated and non-designated recyclable material or solid waste, and shall place such organic waste out for collection by a private carter in a container or containers that (i) has a lid and a latch that keeps the lid closed and is resistant to tampering by rodents or other wildlife, (ii) has the capacity that meets the disposal needs of the covered establishment and its private carter, (iii) is compatible with the private carter's hauling collection practices, and (iv) is closed and latched at the time it is placed out for collection.

4. Any private carter that collects source separated organic waste shall either:

a. deliver collected organic waste to a transfer station that has represented that it will deliver such organic waste to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule; or

b. deliver such organic waste directly to a facility for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule.

5. Any transfer station that receives source separated organic waste pursuant to this section shall deliver or have delivered such organic waste directly to a facility that accepts organic waste for purposes of composting, aerobic or anaerobic digestion, or any other method of processing organic waste that the department approves by rule. This subdivision shall not apply to waste that cannot be processed at an organic waste processing facility.

6. The provisions of this section relating to private carters shall be enforced by the business integrity commission and the department. The provisions of this section relating to covered establishments shall be enforced by the department, the department of health and mental hygiene, and the department of consumer and worker protection.

7. The department, the business integrity commission, the department of health and mental hygiene, and the department of consumer affairs may promulgate any rules necessary to implement this section, including, but not limited to, rules establishing reporting requirements sufficient to demonstrate compliance with this chapter.

8. Any person who owns or operates two or fewer food service establishments may request, and the commissioner shall grant, a waiver of the requirements of this section if: a. no single food service establishment has a floor area of at least seven thousand square feet; b. the food service establishment or establishments are individually franchised outlets of a parent business covered by paragraph d of the definition of "covered establishment" set forth in subdivision one of this section; and c. the owner or operator establishes that such food service establishment or establishments do not receive private carting services through a general carting agreement between a parent business and a private carter. Such waiver shall be valid for twelve months and shall be renewable upon application to the commissioner via the department's website.

§ 16-307 City agency waste. 1. The commissioner shall adopt, amend and implement rules, as necessary, governing the source separation or post-collection separation, collection, processing, marketing, and sale of designated recyclable materials including, but not limited to, designated metal, glass, plastic and paper generated by any agency, as such term is defined in section 1-112 of the code of the preceding municipality.

2. Every agency shall, no later than July first, two thousand eleven, prepare and submit to the commissioner for approval, a waste prevention, reuse and recycling plan. Such plan shall provide for the source separation of designated metal, glass, plastic and paper, and such other designated recyclable materials as the commissioner deems appropriate, in all offices and buildings occupied by agencies that receive collection service from the department and, to the extent practicable, in those that receive private carter collection. Such plans shall provide for the source separation of designated recyclable materials in the lobbies of such offices or buildings that receive department collection, unless the placement of bins for the source separation of designated recyclable materials would be in violation of any other provision of law, and, to the extent practicable, in the lobbies of such offices or buildings that receive private carter collection. Each agency shall designate a lead recycling or sustainability coordinator to oversee implementation of such plans. If an agency has offices in more than one city-owned building, then such agency shall designate one assistant coordinator for each building in which such agency has offices, except the building in which the lead coordinator has his or her office, to assist the agency's lead coordinator.

3. On or before July first, two thousand twelve and annually thereafter, every lead recycling or sustainability coordinator shall submit a report to the head of his or her respective agency and to the commissioner, summarizing actions taken to implement the waste prevention, reuse and recycling plan for the previous twelve-month reporting period, proposed actions to be taken to implement such plan, and updates or changes to any information included in such plan. The department shall consolidate the information contained in all reports prepared pursuant to this subdivision as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

§ 16-307.1 School recycling. 1. The chancellor of the department of education shall designate a sustainability director for the department of education, who shall be responsible for (a) setting policies, guidelines and goals to promote waste prevention, reuse and recycling practices, and (b) coordinating the department of education's waste prevention, reuse and recycling program in all school buildings, charter school locations, office buildings, and any other facilities under the jurisdiction of the department of education that receive department collection service.

2. The chancellor of the department of education shall promulgate such rules as may be necessary to require that each school building, charter school location, office building, and any other facility under the jurisdiction of the department of education that receives department collection service, develop a site-specific waste prevention, reuse and recycling plan. Each such plan shall be implemented by January first, two thousand eleven. Such plan shall include, at a minimum, a requirement that each classroom maintain a separate receptacle, container or bin for the collection of designated recyclable paper, and that such

receptacle, container or bin be appropriately labeled or decorated with recycling information. Such plan shall also provide that separate receptacles, containers or bins for the collection of designated metal, glass and plastic be appropriately labeled or decorated with recycling information and be placed as close as practicable to school entrances, unless the placement of such bins would be in violation of any other provision of law, and in locations within schools where food and beverages are routinely consumed.

3. The principal of each school under the jurisdiction of the department of education shall designate a sustainability coordinator for his or her school who shall be responsible for implementing his or her school's waste prevention, reuse and recycling plan. The principal or the sustainability coordinator shall complete, and submit to the department of education sustainability director and to the chancellor, an annual survey regarding such school's compliance with its waste prevention, reuse and recycling plan.

4. The chancellor shall submit a report to the commissioner by January first of each year regarding compliance with the requirements of this section for the preceding July first through June thirtieth. The department shall include the chancellor's report as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

5. The department shall distribute a model school waste prevention, reuse and recycling plan to all primary and secondary schools not under the jurisdiction of the department of education that receive department collection service. All such primary and secondary schools shall designate a sustainability coordinator for each such school, and develop a site-specific waste prevention, reuse and recycling plan. Each such plan shall be implemented by January first, two thousand eleven. Such plan shall include, at a minimum, a requirement that each room used primarily as a classroom for students between kindergarten and the twelfth grade maintain a separate receptacle, container or bin for the collection of designated recyclable paper, and that such receptacle, container or bin be appropriately labeled or decorated with recycling information. Such plan shall also provide that separate receptacles, containers or bins for the collection of designated metal, glass and plastic be appropriately labeled or decorated with recycling information and be placed as close as practicable to school entrances, unless the placement of such bins would be in violation of any other provision of law. Such bins shall also be placed in centralized locations within such schools where food and beverages are routinely consumed, other than classrooms, such as cafeterias and lunchrooms, or, if such school lacks a cafeteria or lunchroom, in a location readily accessible to all students in such school.

§ 16-307.2 City agency food waste prevention plans. 1. Definitions. As used in this section, the following terms have the following meanings:

a. Covered agency. The term "covered agency" means an agency that has entered into at least one food purchase contract within the previous twelve months.

b. Food purchase contract. The term "food purchase contract" means: (i) a contract entered into by an agency in excess of the small purchase limits established by the procurement policy board, the principal purpose of which is to provide food, provided that such contract authorizes purchases only by the agency that entered into such contract, or

(ii) a purchase order for food the value of which exceeds one hundred thousand dollars, made by an agency against an existing contract.

c. Surplus food. The term "surplus food" means any food obtained through a food purchase contract that is not used for the purpose for which it was purchased and that would otherwise be discarded.

2. Agency food waste prevention plan. Every covered agency shall, no later than October first, two thousand twenty-one, prepare and submit to the commissioner for approval, a food waste prevention plan. Any agency that becomes a covered agency after October first, two thousand twenty-one shall prepare and submit to the commissioner for approval, a food waste prevention plan within ninety days of becoming a covered agency. The commissioner shall submit each approved agency food waste prevention plan to the speaker of the council not later than seven days after such approval. Such plan shall conform to all applicable provisions of law and, at a minimum:

a. Establish guidelines for how to identify surplus food that may be safely donated;

b. Identify methods to reduce the amount of surplus food, including the utilization of the food donation web portal described in section 16-497 of the code of the preceding municipality, when appropriate;

c. Set forth procedures for the safe, efficient donation of surplus food; and

d. Include any other provisions necessary to facilitate the reduction of surplus food and the donation of surplus food.

3. Food waste prevention coordinator. Upon approval of an agency's food waste prevention plan by the commissioner, each covered agency shall designate a coordinator to oversee implementation of the plan required by subdivision two of this section.

4. Report. a. On or before January first, two thousand twenty-two, and annually thereafter for the previous twelve-month reporting period, each covered agency shall submit a report to the commissioner. Such report shall include, at a minimum:

i. A summary of the actions taken to implement the agency's food waste prevention plan;

ii. Any proposed additional actions to be taken to implement such plan; and

iii. Any updates or changes to any information included in such plan.

b. The department shall consolidate the information contained in all reports prepared pursuant to this subdivision and include such information as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

§ 16-307.3 School food waste. 1. Definitions. As used in this section, the following terms have the following meanings:

a. Chancellor. The term "chancellor" means the chancellor of the city school district of the city of New York.

b. Food purchase contract. The term "food purchase contract" means any purchase order or contract entered into by the department of education, the principal purpose of which is to provide food, and the value of which exceeds one hundred thousand dollars.

c. School. The term "school" means a school of the city school district of the city of New York.

d. Surplus food. The term "surplus food" means any food obtained through a food purchase contract that is not used for the purpose for which it was purchased and that would otherwise be discarded.

2. Food waste prevention plan. No later than October first, two thousand twenty-one, the chancellor shall prepare and submit to the commissioner a food waste prevention plan. Preparation of such food waste prevention plan shall provide school sustainability coordinators designated pursuant to subdivision three of section 16-307.1 of this chapter an opportunity to offer ideas concerning food waste prevention. Such plan shall conform to all applicable provisions of law and include, but need not be limited to, the following information:

a. Guidelines for how to identify surplus food that may be safely donated;

b. Any methods the chancellor has identified to reduce the amount of surplus food in schools;

c. Any procedures the chancellor has identified that would allow the department of education or a school to donate surplus food safely and efficiently; and

d. Any barriers the chancellor has identified that would prevent the safe and efficient donation of surplus food.

3. Review by commissioner. The commissioner shall review the plan required pursuant to subdivision two of this section within ninety days of its submission and shall submit recommendations on the plan to the chancellor. The commissioner shall simultaneously submit a copy of the chancellor's plan and the commissioner's recommendations to the speaker of the council.

4. Report. On or before February first, two thousand twenty-two, the chancellor shall submit a report to the commissioner. Such report shall include, at a minimum:

a. A summary of actions taken to implement the food waste prevention plan;

b. A summary of actions that the chancellor proposes be taken to implement such plan; and

c. Any updates or changes to any information included in such plan.

§ 16-308 Organic waste. 1. The commissioner shall provide for the source separation, collection and composting of yard waste, unless the generator otherwise provides for recycling or storage for composting or mulching. In addition, the commissioner shall provide for the collection and composting of yard waste generated and source separated at residential properties owned or operated by the New York city housing authority. There shall be operated by or on behalf of the department one or more yard waste composting facilities through which the department shall compost yard waste collected by or delivered to the department pursuant to this section. In order to comply with this provision, the department may utilize the services of privately-owned or operated facilities. The department shall also work in consultation with the composting facility siting task force established by the two thousand six solid waste management plan to identify additional locations to site yard waste composting facilities with the goal of establishing at least one such composting facility in each borough where the department conducts yard waste composting collection.

2. Any city agency, or person under contract with a city agency, that generates a substantial amount of yard waste shall, in coordination with the department, provide for the source separation, collection and composting of such yard waste. Unless otherwise provided by law, the department shall accept for composting any city agency yard waste source separated for department collection pursuant to this subdivision.

3. No landfill, waste transfer station, intermodal facility, incinerator or resource recovery facility owned, operated or used by the depart-

ment shall accept truck loads of department-managed waste primarily composed of yard waste for final disposal, except that composted yard waste may be used as part of the final vegetative cover for a department landfill.

4. All city agencies responsible for the maintenance of public lands shall to the maximum extent practicable and feasible give preference to the use of compost materials derived from the city's yard waste in all land maintenance activities.

5. Generators of yard waste, except those identified in subdivision seven of this section, shall separate, tie, bundle, or place into bags or receptacles, in accordance with rules promulgated by the commissioner, any yard waste set out for collection by the department pursuant to subdivision two of this section. The commissioner shall notify all residents in districts that receive yard waste collection by the department of such pre-collection procedures, and undertake any other action necessary to effectuate the purposes of this subdivision.

6. No person engaged in a business that generates yard waste shall leave such yard waste for collection by the department, or disperse such yard waste in or about the curb or street. Any person engaged in a business that generates yard waste shall be required to collect and dispose of such yard waste at a permitted composting facility; provided, however, that if the department, by written order of the commissioner, determines that there is insufficient capacity at permitted composting facilities within the city, then such yard waste may be disposed of at any appropriately permitted solid waste management facility.

7. Each permitted composting facility within the city, including those operated by city agencies, shall annually report to the commissioner the amount of yard waste and any other organic waste collected and disposed of by weight at such composting facility. All such reports shall be submitted prior to February first of each calendar year and shall contain the amount collected and disposed of for the previous calendar year. The department shall consolidate the information contained in all reports prepared pursuant to this subdivision and include such information as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

8. No person residing in a district where the department provides residential yard waste composting collection pursuant to subdivision two of this section shall dispose of grass clippings as regular waste for collection by the department during the period of time when the department conducts such composting collection. The department shall conduct outreach and education to inform residents within such districts of the dates when it will conduct yard waste composting collection. No person residing in a district where the department provides residential yard waste composting collection shall be held liable for a violation of this subdivision during the first year the department provides such residential yard waste composting collection.

§ 16-308.1 Curbside organics collection. 1. Organics collection program. The department shall establish a mandatory citywide curbside organics collection program for the diversion of organic waste in accordance with this section. Such program shall be implemented by no later than:

a. October second, two thousand twenty-three, for residential properties in no less than thirty sanitation districts, as determined by the commissioner by rule.

b. October seventh, two thousand twenty-four, for residential properties in all remaining sanitation districts.

2. Implementation plan. No later than July first, two thousand twenty-three, the department shall develop, submit to the mayor and speaker of the council, and post on the department's website a curbside organics collection implementation plan. Such plan shall include information related to, at minimum:

a. How the department will implement such program;

b. The education and outreach program required pursuant to subdivision five of this section; and

c. How the department will distribute necessary materials, including rodent-proof organics collection bins, at no cost to residential building owners, and a timeline for such distribution.

3. End use of collected organic waste. In the next solid waste management plan prepared pursuant to section 27-0107 of the environmental conservation law and presented to the council pursuant to section 16-140 of the code of the preceding municipality following the effective date of this section, the department shall include a plan to maximize the usable composting of organic waste collected pursuant to this section. Such plan for the usable composting of organic waste shall describe the amount of organic waste collected and sent to composting facilities to be processed into usable compost pursuant to this section.

4. Reporting. The department shall report by weight the total amount of organic waste diverted pursuant to this section during the previous year, disaggregated by sanitation district. Such report shall be included as part of the department's annual zero waste report required pursuant to section 16-316.5 of the code of the preceding municipality.

5. Education and outreach. The department shall develop an outreach and education program to educate residents, building owners, and staff of residential buildings on the curbside organics collection program established pursuant to this section. Materials used for such outreach and education program shall be available in all designated citywide languages, as defined in section 23-1101 of the code of the preceding municipality, and any additional languages as determined by the department in consultation with local community organizations. No later than two months prior to the implementation of the curbside organics collection program for residential properties in a sanitation district pursuant to subdivision one of this section, the department shall distribute such materials to residents, building owners, and community based organizations in such district. Such materials shall also be made available on the department's website. Such materials shall include:

a. A detailed explanation of organic waste and the benefits of curbside organics collection;

b. Information on how the curbside organics collection program will be implemented and instructions for how to properly source separate organic waste; and

c. Any other information as determined by the commissioner.

6. Rules. The commissioner shall adopt and implement rules as necessary to effectuate this section. Such rules may include, but need not be limited to, the designation of organic waste as a recyclable material pursuant to subdivision two of section 16-305 of this chapter, procedures requiring the placement of organic waste at the curbside, in specialized containers or in another manner determined by the commissioner pursuant to subdivision four of such section, and the implementation and enforcement of this section and such rules in buildings

containing four or more dwelling units pursuant to subdivisions five, six and seven of section 16-305 of this chapter.

7. Penalty. A residential building owner who violates this section shall be liable for a civil penalty as set forth in section 16-324 of this title, except that prior to April first, two thousand twenty-five, a residential building owner who violates this section shall be issued a written warning that a violation has been observed, provided that nothing in this subdivision shall preclude the department from enforcing any rules relating to yard waste separation promulgated pursuant to section 16-308 of this chapter.

§ 16-308.2 Organic waste drop off sites. 1. Definitions. As used in this section, the following terms have the following meanings:

a. Community partner. The term "community partner" means a not-for-profit organization, community garden or other similar organization that operates or makes available to the public an organic waste drop off site.

b. Community scale composting facility. The term "community scale composting facility" means a physical location operated by a not-for-profit organization that engages in composting, through a registration or agreement with the department, but that is not of sufficient size so as to be required to obtain a permit for the operation of such facility from the New York state department of environmental conservation.

c. Organic waste drop off site. The term "organic waste drop off site" means a physical location for the collection of organic waste from members of the public.

2. Except as provided in subdivision three of this section, no later than April first, two thousand twenty-four, the department, in consultation with community partners, shall ensure that no less than thirty organic waste drop off sites are established and operational throughout the city, provided that no less than three such sites are established in each borough. Each such site shall have a minimum of twenty hours available per week for individuals to drop off organic waste, except that organic waste drop off sites operated by community partners shall be open for a minimum of five hours per week, and each such organic waste drop off site shall be located in a geographic area that is easily accessible, including for persons with disabilities, and in close proximity to public transportation, provided, however, an organic waste drop off site operated by a community partner may be operated on a seasonal basis.

3. For the purposes of subdivision two of this section, an organic waste drop off site may be a community scale composting facility or a drop off site operated by the department, including co-location with a recycling center, as required pursuant to section 16-310.3 of this chapter.

4. No later than January first, two thousand twenty-six, the department shall review the requirements of subdivision two of this section and submit to the mayor and the speaker of the council a recommendation as to whether such drop off sites should be continued.

5. Site information. The department shall post on its website information about each organic waste drop off site established pursuant to this section. Such information shall include each such site's address, contact information, hours of operation and services provided. Where applicable, such information shall also be clearly posted in a publicly visible location at the entrance to each such site.

6. Education and outreach. The department, in consultation with any agency or office designated by the mayor, shall develop an education and

outreach program to inform residents about the organic waste drop off sites and community scale composting facilities established pursuant to this section. Such education and outreach shall include the information set forth in subdivision five of this section. Any educational or outreach materials developed pursuant to this section, as well as any other educational materials on recycling that the commissioner deems relevant, shall be available in all designated citywide languages, as defined in section 23-1101 of the code of the preceding municipality, and supplied to each organic waste drop off site. The department shall also perform outreach to community partners and other not-for-profit organizations to provide them with information on how the public can engage in opportunities to work with the department to open and operate organic waste drop off sites and community scale composting facilities.

7. Reporting. The department shall report annually on the operation of organic waste drop off sites. Such report shall be included as part of the department's annual zero waste report required pursuant to section 16-316.5 of the code of the preceding municipality. Such report shall include, at a minimum, the following information, disaggregated by organic waste drop off site where feasible:

a. The total amount of material collected at such site;

b. The number of individuals who used such site during the reporting period;

c. The number of full-time and part-time staff members working at such site, if any; and

d. Where the organic waste collected at such site was processed following collection.

§ 16-309 Christmas trees. The commissioner shall establish and implement a curbside collection system for Christmas trees during a minimum of two weeks in January of each year and provide for the composting or recycling of the Christmas trees the department collects or receives for disposal.

§ 16-310 Public space recycling. 1. The department shall expand its public space recycling program by increasing the number of public space recycling receptacles for the collection of recyclable materials including, but not limited to, metal, glass, plastic and paper designated as recyclable materials by the commissioner, to a cumulative total of at least five hundred public space recycling receptacles, and to a cumulative total of at least one thousand public space recycling receptacles, at public locations in the city, which shall be in or near public parks, transit hubs, or commercial locations with high-pedestrian traffic. As part of such expansion, the department shall place public space recycling receptacles in all business improvement districts that provide public litter basket maintenance. Whenever practicable, public space recycling receptacles placed pursuant to this section shall be placed adjacent to public litter baskets.

2. Notwithstanding the provisions of subdivision one of this section, the department shall not be required to expand the public space recycling program beyond existing or newly-established collection routes that can be efficiently serviced by the department. The commissioner shall have the authority to remove any public space recycling receptacle placed pursuant to this section, provided that the department replaces any such public space recycling receptacle, within thirty days of removal, with additional public space recycling receptacles at the same or in a different location on a one-to-one basis.

3. No person responsible for removing or transporting recyclable materials placed in public space recycling receptacles shall commingle such

recyclable materials with non-recyclable materials or otherwise improperly dispose of such recyclable materials.

4. The department shall report the total number of public space recycling receptacles added during the relevant reporting year, and the locations in which they were placed. Such report shall be included as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

5. The department may enter into sponsorship or partnership agreements with entities such as for-profit and not-for-profit corporations and district management associations established in accordance with section 25-414 of the code of the preceding municipality to further the goals of this chapter.

§ 16-310.1 Textile reuse and recycling program. 1. On or before January first, two thousand eleven, the department shall establish a citywide textile reuse and recycling program that shall, at a minimum, provide for the recovery of textiles by placing department-approved publicly accessible textile drop-off bins at appropriate locations on city property or property maintained by the city and organizing public textile reuse and recycling sites throughout the city that provide convenient drop-off locations for all city residents. In addition, the commissioner shall explore opportunities to work cooperatively with private entities, including, but not limited to, not-for-profit corporations and religious institutions, to promote expanded siting of publicly accessible textile drop-off bins on private property throughout the city. The department shall consider using department personnel or facilities in order to implement the provisions of this section.

2. No publicly accessible textile drop-off bin placed pursuant to this section shall be placed on city property or property maintained by the city, or on a public sidewalk or roadway, unless otherwise authorized by the city. No publicly accessible textile drop-off bin shall be placed on private property without the written permission of the property owner or the property owner's authorized agent. The owner or other person responsible for each such bin shall report at least every three months to the department the amount of textiles collected in such bin by weight. Each publicly accessible textile drop-off bin shall prominently display on the front and on at least one other side of the bin, the name, address and telephone number of the owner or other person responsible for the bin. This information shall be printed in characters that are plainly visible. In no event shall a post office box be considered an acceptable address for purposes of this subdivision.

3. The department shall report by weight the amount of textiles collected in publicly accessible textile drop-off bins located on city property or property maintained by the city, through public textile reuse and recycling sites pursuant to subdivision one of this section and in publicly accessible textile drop-off bins maintained on private property. Such report shall be included as part of the department's annual zero waste report required pursuant to subdivision b of section 16-316.5 of the code of the preceding municipality.

§ 16-310.2 Paint stewardship program. 1. The commissioner shall establish a voluntary paint stewardship program under which manufacturers of architectural paint, in cooperation with distributors of architectural paint and retail establishments that sell, or offer for sale, architectural paint in the city, may establish a collection or other reclamation system to collect architectural paint from consumers for reuse, recycling or environmentally sound disposal.

2. The commissioner shall provide assistance or guidance to participating architectural paint manufacturers, distributors and retail establishments in developing and implementing strategies to reduce the quantity of architectural paint in the waste stream, promote the reuse of architectural paint that would otherwise be discarded and disseminate information regarding options to recycle architectural paint including, but not limited to, posting information regarding the voluntary paint stewardship program on the department's website.

§ 16-310.3 Community recycling. 1. Community recycling centers. No later than December thirty-first, two thousand twenty-four, the department shall ensure that at least two community recycling centers are established and operational in each borough. Each such center shall be available for drop offs at least twenty-four hours per week, including weekends. Such centers shall be located in geographic areas that are easily accessible, including for persons with disabilities, and shall be in close proximity to public transportation and public housing developments, where practicable. Any organic waste drop off site provided for by local law may be co-located within such a center.

2. Community recycling events. No later than September thirtieth, two thousand twenty-three, and annually thereafter, the department shall host no less than one community recycling event in each community district. Each such event shall be located in a geographic area that is easily accessible, including for persons with disabilities, and in close proximity to public transportation and public housing developments, where practicable. Such events may be co-located with other sanitation services. Community recycling events required by this subdivision shall be in addition to any recycling event operated by an entity or organization other than the department, provided that any recycling event operated pursuant to a contract with the department shall be considered to be hosted by the department for purposes of this section.

3. Materials collected. Each community recycling center and community recycling event shall accept, to the extent practicable, inorganic material that is not collected through regular curbside collection but that can be recycled or reused. One community recycling center per borough shall also accept hazardous material, as practicable and as defined by the department, that should not be disposed of as curbside waste.

4. Community recycling center and event information. The department shall make available on the department's website, and distribute to each local community board, the following information about the community recycling centers and community recycling events required by this section:

a. Location, including street address and borough;

b. Contact information;

c. Hours of operation; and

d. Services provided.

5. Education and outreach. The department, in consultation with any agency identified by the mayor, shall develop an outreach and education program to inform residents about community recycling centers and community recycling events, including their locations, contact information, hours of operation, and the services they provide.

6. Reporting. The department shall report annually on the operation community recycling centers and community recycling events required pursuant to this section. Such report shall be included as part of the department's annual waste diversion report required pursuant to section 16-316.5 of the code of the preceding municipality. Such report shall include, but need not be limited to, the following information, disag-

gregated by community recycling center and community recycling event, where feasible:

a. The number of individuals utilizing such centers and events;

b. The material collected at each such center and event, disaggregated by material type;

c. The number of full-time and part-time staff persons working at each such center and event;

d. Where each type of material collected is sent; and

e. A description of the education programs offered to the public.

§ 16-311. Recycling outreach and education. 1. The department shall provide instruction and materials for residential building owners, net lessees or persons in charge of such buildings, and their employees and residents, in order to improve compliance with the provisions of this chapter.

2. The commissioner shall establish a recycling education program that shall include recycling instructional workshops, training curricula and other relevant materials for residential building owners, net lessees or persons in charge of such buildings, and their employees and residents, including an internet-based recycling tutorial. Such program shall also provide instructional workshops, training curricula, and other relevant material to employees of city agencies, including a leaf and yard waste training program for employees of any such agencies that generate significant leaf and yard waste. The commissioner may utilize a private entity or not-for-profit corporation to assist with the establishment or performance of such program.

§ 16-312 Processing recyclable materials. The commissioner shall establish procedures and standards for processing recyclable materials designated pursuant to section 16-305 of this chapter in city owned or operated recycling centers, city owned or operated transfer stations or any city owned or operated facility that renders recyclable materials suitable for reuse or marketing and sale. The commissioner shall annually review such procedures and standards and make any changes necessary to conform to the requirements of the marketplace.

§ 16-313 Marketing recyclable materials. The department shall establish procedures, standards and strategies to market the recyclable materials designated pursuant to section 16-305 of this chapter, including but not limited to maintaining a list of prospective buyers, establishing contact with prospective buyers, entering into contracts with buyers, and reviewing and making any necessary changes in collecting or processing the materials to improve their marketability.

§ 16-314 Recycling program revisions. The commissioner shall annually review the recycling program and all rules promulgated thereunder, and shall make the necessary revisions to improve the efficiency of collecting, processing, marketing and selling the materials recycled pursuant to this title. These revisions may include designating additional recyclable materials. The commissioner shall not delete designated materials without designating additional materials so that the total quantity, by weight, of all designated recyclable materials collected, processed, marketed and sold does not decrease.

Where the commissioner determines that it is appropriate to delete a designated material, the department shall provide notice of such deletion to the mayor and the council, including the reason for such deletion, and shall provide any relevant data supporting such decision.

§ 16-315 Notice, education and research programs. 1. In addition to the notice requirements of this code, within thirty days of the effective date of any rules promulgated pursuant to this title, and as

frequently thereafter as the commissioner deems necessary, the department shall notify all persons occupying residential, commercial and industrial premises affected by the rules, of the requirements of the rules, by posting notices containing recycling information in public places where such notices are customarily placed and, in the commissioner's discretion, employing any other means of notification deemed necessary and appropriate.

2. The commissioner shall compile relevant recycling, reuse and composting information, including material available on the department's website, to create and make available a guide to the city's residential recycling program. Such guide shall, at a minimum, summarize and explain the laws and rules governing curbside recycling, list the collection locations and collection dates for non-curbside collected recyclable materials such as household hazardous waste and textiles, and provide detailed information and instructions on how to recycle any materials not collected by the department for which non-city or non-department recycling programs exist. Such guide shall be made available to residential building owners, or the net lessees or persons in charge of such buildings, community boards, not-for-profit organizations, public schools, and other relevant agencies and entities, and shall also be made available on the department website. The commissioner shall update the recycling guide biennially, or as necessary, based on changes to recycling laws, rules or other relevant information to be included therein.

3. The department shall develop and implement an educational program, in conjunction with the department of education, private schools, labor organizations, businesses, neighborhood organizations, and other interested and affected parties, and using flyers, print and electronic advertising, public events, promotional activities, public service announcements, and such other techniques as the commissioner determines to be useful, to assure the greatest possible level of compliance with the provisions of this title. The educational program shall encourage waste reduction, the reuse of materials, the purchase of recyclable products, and participation in city and private recycling activities.

4. The department shall perform such research and development activities, in cooperation with other city agencies, and public and private institutions, as the commissioner determines to be helpful in implementing the city's recycling program. Such research shall include, but not be limited to, investigation into the use of cooperative marketing programs, material recovery facilities, recycling as an economic development tool, export promotion, tax credits and exemptions for market promotion.

## Chapter 5
## RECYCLING ADVISORY BOARDS

§ 16-317 Citizens' solid waste advisory boards; membership. Within six months of the effective date of this title, the city shall establish a citizens' solid waste advisory board (the "citizens' board"), consisting of no fewer than twenty members who for the first term shall be comprised of the members of the city's citizens' advisory committee on resource recovery and other persons appointed jointly by the mayor and the council members. For each subsequent term, all members shall be appointed jointly by the mayor and the council members. The membership of the citizens' board shall represent community boards, recycling industries, carting industries, environmental organizations, government

agencies, labor organizations, business organizations, property owners, tenant organizations and members of the general public. Members shall serve for a term of one year without compensation and shall designate one member to serve as chairperson and one as vice-chairperson.

§ 16-318 Functions of the citizens' board. 1. The department shall submit to the mayor the portion of the biennial report addressing the city's recycling program that is prepared pursuant to the city's two thousand six solid waste management plan, simultaneous with the submission of such report to the mayor and the council. The mayor shall distribute copies of the plans to each member of the citizens' board. Within ninety days thereafter, the citizens' board shall review the plans, conduct a public hearing on the plans and make written recommendations to the mayor, the department and the council with respect to the recycling program. The citizens' board shall also annually advise the mayor and the department with respect to the development, promotion and operation of the recycling program and pursuant to this function shall formulate and recommend:

(a) annual recycling goals equal to or greater than those set forth in section 16-305 of this title and the methods proposed to achieve such goals;

(b) means to encourage community participation in the recycling program; and

(c) means to promote the recycling program and educate the public with regard to the program.

2. The citizens' board shall assume all the responsibilities and functions of the city's citizens' advisory committee on resource recovery.

§ 16-319 Citywide recycling advisory board; membership. There shall be a citywide recycling advisory board (the "citywide board") consisting of at least one representative from each citizen's board, five members appointed by the council, and five members appointed by the mayor. The membership of the citywide board shall represent community boards, recycling industries, carting industries, environmental organizations, government agencies, labor organizations, business organizations, real property owners, tenant organizations and members of the general public. Members shall serve for a term of one year without compensation and shall designate one member to serve as chairperson and one as vice-chairperson.

§ 16-320 Functions of the citywide board. The citywide board shall meet at least four times a year to discuss citywide recycling issues, including but not limited to budgetary issues. The citywide board shall annually review the department's recycling program and make recommendations to the mayor and the council concerning improvements to and changes in the program.

§ 16-321 Disclosure requirements. 1. Whenever a person, other than a public servant, appointed to any advisory board created pursuant to this chapter, engages in any business dealings with the department, or engages in business dealings with any other agency that relate to processing or disposal of solid waste or of waste described in paragraph (c) of subdivision fifteen of section 16-303 of this title or to recycling, or has an interest in a firm that is engaged in such business dealings with the department or with such other agency, such person shall, prior to appointment, disclose the nature of such business dealings to the commissioner and to the body or officer appointing such person, and, after appointment, disclose the nature of such business dealings to the commissioner and to all other members of such board; provided that such person need not disclose the amount of such business dealings.

2. When used in this section:

(a) "Advisory committee" means a committee, council, board or similar entity that is constituted to provide advice or recommendations to the city and which has no authority to take a final action on behalf of the city, to take any action that would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action that is authorized by law.

(b) "Agency" means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the department of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation and the public development corporation, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(c) "Blind trust" means a trust in which a candidate for any advisory board created pursuant to this chapter or a member of such board, or the spouse or unemancipated child of such candidate or member, has a beneficial interest, the holdings and sources of income of which such candidate or member and such spouse and unemancipated child have no knowledge, and the trustee of which shall have independent authority and discretion.

(d) "Business dealings" means any transaction involving the sale, purchase, rental, disposition or exchange of any goods, services or property, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving the residence of any candidate for any advisory board created pursuant to this chapter or of any member of such board, or any ministerial matter.

(e) "City" means the city of Staten Island and includes an agency of the city.

(f) "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

(g) "Firm" means a sole proprietorship, joint venture, partnership, corporation or any other form of enterprise, but shall not include a public benefit corporation or local development corporation.

(h) "Interest" means an ownership interest in a firm or a position with a firm.

(i) "Ministerial matter" means an administrative act that is carried out in a prescribed manner and which does not involve substantial personal discretion.

(j) "Ownership interest" means an interest in a firm that is held by a candidate for any advisory board created pursuant to this chapter, or by a member of such board, or by the spouse, domestic partner, or unemancipated child of such candidate or member, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when such candidate or member, or such spouse, domestic partner, or unemancipated child, exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by such candidate or

member, or by such spouse, domestic partner, or unemancipated child, or in any blind trust that holds or acquires an ownership interest.

(k) "Position" means a position in a firm, such as an officer, director, trustee, employee or any management position, or as an attorney, agent, broker or consultant to the firm, which does not constitute an ownership interest in the firm.

(l) "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

(m) "Spouse" means a husband or wife of a candidate for any advisory board created pursuant to this chapter or of a member of such board who is not legally separated from such candidate or member.

(n) "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of a candidate for any advisory board created pursuant to this chapter or of the member of such board.

## Chapter 7
## REGULATIONS SUBMITTED TO COUNCIL AND ENFORCEMENT

§ 16-323 Rules submitted to council. Rules adopted by the commissioner pursuant to this chapter shall become effective only after filing and publication as prescribed by chapter forty-five of the charter of the preceding municipality. In addition, notwithstanding the provisions of chapter forty-five of such charter, prior to adoption by the commissioner of a final rule pursuant to subdivision e of section one thousand forty-three of such charter, and after consideration of relevant comments presented pursuant to subdivision d of such section, the commissioner shall submit to the council the text of the final rule proposed to be published in the city record. The council shall have thirty days from the date of such submission to comment upon such text. The final rule may include revisions in response to comments from the council and shall not be published in the city record before the thirty-first day after such submission, unless the speaker of the council authorizes earlier publication.

§ 16-324 Enforcement. 1. Subject to the provisions of subdivision two of this section, any person who violates this chapter, except section 16-306.1 of this title, subdivision seven of section 16-308 of this title, section 16-310.1 of this title or section 16-329 of the code of the preceding municipality, or any rule promulgated pursuant thereto, shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or in a proceeding returnable before the environmental control board, as follows:

a. For residential buildings containing fewer than nine dwelling units, the civil penalty shall be in an amount of twenty-five dollars for the first violation, fifty dollars for the second violation committed on a different day within a period of twelve months, and one hundred dollars for the third and each subsequent violation committed on a different day within a period of twelve months, provided that the court before which such civil action is brought or such board may waive the penalty for the first violation upon a showing of good cause.

b. For residential buildings containing nine or more dwelling units and commercial, manufacturing or industrial buildings, the civil penalty shall be in an amount of one hundred dollars for the first violation, two hundred dollars for the second violation committed on a different

day within a period of twelve months, and four hundred dollars for the third and each subsequent violation committed on a different day within a period of twelve months, provided that the court before which such civil action is brought or such board may waive the penalty for the first violation upon a showing of good cause. The owner, net lessee or person in charge of any residential building of nine or more dwelling units or a commercial, manufacturing or industrial building with respect to which four or more violations were committed on different days within a period of six months shall be classified as a persistent violator.

c. For persistent violators only, each container or bag containing solid waste that has not been source separated or placed out for collection in accordance with the rules promulgated by the commissioner pursuant to this chapter shall constitute a separate violation, provided that no more than twenty separate violations are issued on a per bag or per container basis during any twenty-four hour period. Before issuing any such notices of violation to a persistent violator on a per bag or per container basis, the commissioner shall give such violator a reasonable opportunity to correct the condition constituting the violation.

d. There shall be a rebuttable presumption that the number of dwelling units designated on a notice of violation issued pursuant to this section reflects the number of dwelling units in the residential building for which the notice of violation was issued. Where such presumption is rebutted, the number of dwelling units on such notice of violation shall be deemed modified accordingly, and in no event shall such notice of violation be dismissed solely on the ground that the number of dwelling units on the original notice of violation was incorrectly stated.

e. The commissioner or the commissioner's designee shall establish a recycling training program for owners or employees of residential buildings of nine or more dwelling units for which at least three notices of violation for failing to properly source separate designated recyclable material have been issued within a twelve-month period and which the commissioner determines to be in need of recycling training. Such training program shall require the building owner, or an employee who is primarily responsible for waste disposal or janitorial services for any such building, to attend a training program established by the commissioner or the commissioner's designee designed to improve recycling practices at such building and a fee may be imposed on any owner or employee who participates in such training program. Such training program may be held in any location designated by the commissioner or the commissioner's designee, including, in order to facilitate tenant participation, at such building.

2. Any person who violates subdivision seven of section 16-308 of this title or any rules promulgated pursuant thereto shall be liable for a civil penalty in the amount of two hundred fifty dollars for the first violation, five hundred dollars for the second violation committed within a twelve-month period, and one thousand dollars for the third and each subsequent violation committed within a twelve-month period.

3. Any owner or other person responsible for a publicly accessible textile drop-off bin who violates subdivision two of section 16-310.1 of this title shall be liable as follows:

a. In the event that a publicly accessible textile drop-off bin is impermissibly placed on city property, or property maintained by the city, or on any public sidewalk or roadway, the owner of the publicly accessible textile drop-off bin, if the address of such owner is ascertainable, shall be notified by the department by certified mail, return receipt requested, that such publicly accessible textile drop-off bin

must be removed within thirty days from the mailing of such notice. A copy of such notice, regardless of whether the address of such owner or other responsible person is ascertainable, shall also be affixed to the publicly accessible textile drop-off bin. This notice shall state that if the address of the owner or other responsible person is not ascertainable and notice is not mailed by the department, such publicly accessible textile drop-off bin shall be removed within thirty days from the affixing of such notice. This notice shall also state that the failure to remove the publicly accessible textile drop-off bin within the designated time period will result in the removal and disposal of the publicly accessible textile drop-off bin by the department. This notice shall also state that if the owner or other responsible person objects to removal on the grounds that the publicly accessible textile drop-off bin is not on city property, or property maintained by the city, or on any public sidewalk or roadway, such owner or other responsible person may send written objection to the department at the address indicated on the notice within twenty days from the mailing of such notice or, if the address of such owner or other responsible person is not ascertainable and notice is not mailed by the department, within twenty days from the affixing of such notice, with proof that the publicly accessible textile drop-off bin is not on city property, or property maintained by the city, or on any public sidewalk or roadway. Proof that the publicly accessible textile drop-off bin is not on city property, or property maintained by the city, or on any public sidewalk or roadway shall include, but not be limited to, a survey of the property prepared by a licensed surveyor that is certified by the record owner of such property.

b. Any owner or other person responsible for an impermissibly placed publicly accessible textile drop-off bin that fails to respond within twenty days of receipt of such notice under paragraph a of this subdivision or otherwise fails to establish that the publicly accessible textile drop-off bin is not on city property, or property maintained by the city, or on any public sidewalk or roadway pursuant to paragraph a of this subdivision, shall be liable for a civil penalty in the amount of one hundred dollars, recoverable in a proceeding returnable before the environmental control board.

4. Any notice of violation or notice of hearing for a violation issued to the owner, net lessee or person in charge of a premises or to a food service establishment, mobile food commissary, store, or manufacturer, as those terms are defined in section 16-329 of the code of the preceding municipality, at which or by whom a violation of this chapter or any rule promulgated pursuant thereto is alleged to have occurred or to have been committed shall be served by delivering a copy of the notice thereof at the address maintained in the records of the department of housing preservation and development, the department of finance, or the department of health and mental hygiene. The notice of violation or notice of hearing may be served by regular mail or in accordance with section one thousand forty-nine-a of the charter of the preceding municipality or, if such notice is served by an agency other than the department, in accordance with the rules of such agency.

5. a. Any covered establishment that violates section 16-306.1 of this title or rules of the department, the department of health and mental hygiene, or the department of consumer and worker protection promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or the commissioner of health and mental hygiene, or the commissioner of consumer and worker

protection, or in a proceeding returnable before any tribunal established within the office of administrative trials and hearings in the amount of two hundred fifty dollars for the first violation, five hundred dollars for the second violation committed on a different day within a period of twelve months, and one thousand dollars for the third and each subsequent violation committed on different days within a period of twelve months, except that the department, the department of health and mental hygiene, and the department of consumer and worker protection shall not issue a notice of violation, but shall issue a warning, for any violation by a designated covered establishment that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision two of section 16-306.1 of this title.

b. Any transfer station that violates section 16-306.1 of this title or rules of the department promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner or in a proceeding returnable before the environmental control board in the amount of two hundred fifty dollars for the first violation, five hundred dollars for the second violation committed on a different day within a period of twelve months, and one thousand dollars for the third and each subsequent violation committed on different days within a period of twelve months, except that the department shall not issue a notice of violation, but shall issue a warning, for any violation by a designated covered establishment that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision two of section 16-306.1 of this title.

c. Any private carter that violates section 16-306.1 of this title or rules of the business integrity commission promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the chair of the business integrity commission, or in a proceeding brought by the chair of the business integrity commission held in accordance with title sixteen-A of the code of the preceding municipality, except that the chair of the business integrity commission shall not issue a notice of violation, but shall issue a warning, for any violation by a designated covered establishment that occurs during the first twelve months after the commissioner designates such covered establishment pursuant to subdivision two of section 16-306.1 of this title.

6. Any person who violates section 16-329 of the code of the preceding municipality or any rule promulgated pursuant thereto shall be liable for a civil penalty recoverable in a civil action brought in the name of the commissioner, the commissioner of health and mental hygiene or the commissioner of consumer and worker protection, or in a proceeding before the environmental control board, or any tribunal established within the office of administrative trials and hearings in the amount of one hundred fifty dollars for the first violation, two hundred fifty dollars for the second violation committed on a different day within a period of twelve months, and five hundred dollars for the third and each subsequent violation committed on different days within a period of twelve months.

## Title 17 - Health

§ 17-101 Definitions. As used in this title:

1. "Board" shall mean the board of health.

2. "Commissioner" means the commissioner of the department of health.
3. "Department" means the department of health.
4. "Health code" means the health code of the city of Staten Island.

§ 17-102 Department; commissioner. 1. There shall be a department of health, the head of which shall be the commissioner of health.

2. The commissioner, with concurrence of the board of health, may adopt a seal for use in the authentication of the orders, proceedings and commissions of the department.

3. The commissioner shall be appointed by the mayor and shall be a doctor of medicine and a holder of a degree of master of public health or a degree of master of business administration with concentration in the health field or a degree of master of public administration with concentration in the health field or the equivalent of any one of the specified foregoing degrees received from a college or university and have had at least five years' experience either in public health or administration or in college or university public health teaching or both.

§ 17-103 Board of health. 1. There shall be in the department a board of health, the chair of which shall be the commissioner. In addition to the chairperson the board shall also consist of four members, two of whom shall be doctors of medicine who shall each have had not less than ten years' experience in any or all of the following: clinical medicine, public health administration or college or university public health teaching. The other two members need not be physicians.

2. The four members other than the chairperson shall serve without compensation and shall be appointed by the mayor, each for a term of eight years. In the case of a vacancy, the mayor shall appoint a member to serve for the unexpired term.

3. The commissioner shall designate employees of the department as necessary to service the board including an employee designated by the commissioner to serve as the secretary of the board.

4. A member of the board of health, other than the chair, may be removed by the mayor on proof of official misconduct or of negligence in official duties or of conduct in any manner connected with his or her official duties, or of mental or physical inability to perform his or her duties. Prior to removal of a board member for any of the reasons stated above, the member shall be given a copy of the charges against him or her and shall be entitled to a hearing before the mayor and to assistance of counsel at such hearing.

§ 17-104 Powers and duties of commissioner. 1. The commissioner shall:

(a) have all the powers and duties vested in him or her or in the department by this title, except for those vested by law in the board of health or the chief medical examiner.

(b) prepare and submit to appropriate governmental authorities short term, intermediate and long range plans and programs designed to meet the needs of the city including the needs for construction and operation of medical and health care facilities, except that the commissioner may not construct or operate a new medical facility until the health systems agency having jurisdiction over that institution has received a copy of the application filed with the commissioner, in the case of private institutions, or all information in form and detail as the health systems agency shall require, in the case of institutions of the city of Staten Island, and it shall have given the commissioner a written decision of approval or disapproval; and

(c) not be considered bound by the decision given as described above, but he or she shall not approve any construction, addition or modification contrary to the health systems agency without first holding a public hearing.

2. In reaching decisions pursuant to this section, the commissioner and the health systems agency shall consider:

(a) the public need for the existence of the new institution or the construction, addition or modification of an existing institution at the time and place and under the circumstances proposed;

(b) the character, competence and standing in the community of the owners and licensees, in the case of private institutions;

(c) the financial resources of the institution and its sources of future revenue;

(d) the fitness and adequacy of the premises, and equipment, personnel and standards of care to be used in the operation of the proposed institution; and

(e) such other matters as each of them considers pertinent.

3. The commissioner may compel the attendance of witnesses in any matter or proceeding before the commissioner.

4. The commissioner may assess any penalty prescribed for a violation of or a failure to comply with any provision of this title or any other lawful notice, order or regulation pursuant thereto, which penalty may be assessed, although not to exceed one thousand dollars, after a hearing or an opportunity to be heard.

§ 17-105 Functions, powers and duties of the department. Except as otherwise provided by law, the department shall have jurisdiction to regulate all matters affecting health in the city and to perform all those functions and operations performed by the city that relate to the health of the people of the city including, but not limited to, the following:

1. enforce all provisions of law applicable in the area under the jurisdiction of the department for the preservation of human life; the care, promotion and protection of health and to the necessary health supervision of the purity and wholesomeness of the water supply. The department shall also maintain and operate office health centers, health stations or other facilities which may be required for the preservation of health and the care of the sick;

2. exercise its functions, powers and duties in the area extending over the city, the waters adjacent thereto, within the jurisdiction of the city and within the quarantine limits established by law;

3. receive and expend funds made available for public health purposes;

4. supervise and control the registration of births, fetal deaths and deaths;

5. engage in and promote health research for the purpose of improving the quality of medical and health care. In conducting such research the department may conduct medical audits, receive reports on forms prescribed by the department and any information received by the department with regard to such research shall be kept strictly confidential, used solely for medical or scientific research purposes or for the improvement of the quality of medical care;

6. supervise the reporting and control of communicable and chronic diseases and conditions hazardous to life and health; and exercise control over and supervise the abatement of nuisances affecting the public health;

7. produce, standardize and distribute certain diagnostic, preventative and therapeutic products and conduct laboratory examinations for the diagnosis, prevention and control of disease;

8. promote or provide education in the prevention and control of disease;

9. promote or provide diagnostic and therapeutic services for maternity and child health, family planning, communicable disease, medical rehabilitation, narcotics addiction and other diseases and conditions affecting public health;

10. promote and provide medical and health services for school children and the ambulant sick and needy persons of the city;

11. promote and provide medical and health services for the incarcerated individuals of prisons maintained and operated by the city;

12. maintain and operate public health centers and clinics as shall be established in the department;

13. prior to the sale, closing, abandonment or transfer of a city hospital, hold a public hearing regarding such proposal; and publish notice of such hearing in such daily newspaper published in the city as selected by the commissioner, such publication to take place not less than ten days nor more than thirty days prior to the date fixed for the hearing;

14. analyze and monitor hospitals, clinics, nursing homes and homes for the aged, and analyze, evaluate, supervise and regulate clinical laboratories, blood banks and related facilities providing medical services;

15. supervise and regulate the public health aspects of water supply, sewage disposal and water pollution;

16. supervise and regulate the public health aspects of the production, processing and distribution of milk, cream and milk products;

17. supervise and regulate the public health aspects of the food and drug supply of the city and other businesses or activities affecting public health in the city;

18. supervise and regulate the public health aspects of ionizing radiation, handling and disposal of radioactive wastes and the activities within the city affecting radioactive materials, excluding special nuclear materials in quantities sufficient to form a critical mass; and

19. supervise and regulate the removal, transportation and disposal of human remains.

§ 17-106 Chief medical examiner. 1. There shall be in the department an independent office of chief medical examiner, the head of which shall be the chief medical examiner.

2. The chief medical examiner shall be appointed by the mayor from the classified civil service and shall be a doctor of medicine and a skilled pathologist and microscopist. The mayor may remove the chief medical examiner upon filing in the office of the personnel director and serving upon the examiner his or her reasons therefor and allowing the officer an opportunity of making a public explanation.

3. The commissioner, with respect to the office of chief medical examiner, shall exercise certain powers and duties pursuant to this section, but he or she shall not interfere with performance by the chief medical examiner or his or her office.

4. The chief medical examiner may appoint and remove such deputy chief medical examiners, assistant medical examiners, junior medical examiners, medical investigators, scientific experts and other officers or employees as may be provided for in the budget.

All assistant, associate, deputy and junior medical examiners shall possess the same basic qualifications as the chief medical examiner. The medical investigators shall be physicians duly licensed to practice medicine in the state of New York.

5. The office of chief medical examiner shall be kept open every day in the year, including Sundays and all legal holidays, and a clerk shall be in attendance at all times during the day and night.

6. The chief and all deputy chief, associate, assistant and junior medical examiners and all investigators may administer oaths, take affidavits, proofs and examinations.

7. The chief medical examiner shall have such powers and duties as may be provided by law with respect to bodies of persons dying from criminal violence, casualty, suicide, suddenly when in apparent good health, when unattended by a physician, in a correctional facility or in any suspicious or unusual manner or where an application is made for a permit for cremation of the body.

8. The chief medical examiner shall keep full and complete records. He or she shall promptly deliver, to the district attorney, copies of all records relating to every death in which, in the opinion of the chief medical examiner, there is any indication of criminality. Such records shall not be open to public inspection.

§ 17-107 Health code. 1. The health code which is in force in the preceding municipality on the date and time which this title takes effect and all existing provisions of the health code, including penalties affixed for violations, shall continue to be binding and in full force, except as amended from time to time.

2. The board of health may add to, alter, amend or replace any part of the health code, and may provide for the enforcement of the health code or any orders made by the commissioner. The board of health shall prescribe in the health code all matters and subjects to which the power and authority of the department extends.

3. Any violation of the health code shall be treated and punished as a misdemeanor.

§ 17-108 Temporary hospitals during epidemic. The board of health, during prevalence of an epidemic or in the presence of great and imminent peril to the public health, may take possession of any buildings in the city for temporary hospitals and shall pay a just compensation for any private property so taken. Such temporary hospitals shall be under the control of the commissioner.

§ 17-109 Permits. The board of health may grant, suspend or revoke permits for businesses and other matters in respect to any subject dealt with in the health code or regulated by the department and the board may prescribe reasonable fees for the issuance of said permits.

§ 17-110 Declaration of imminent peril. In the presence of great and imminent peril to public health, the board of health shall take such measures and order the department of health to do such acts beyond those duly provided for, in the interests of preservation of the public health. No expenditure shall be incurred in the exercise of such extraordinary power, unless provision is made therefor in the budget or unless such expenditures are financed pursuant to section 107.00 or section 29.00 of the local finance law. Such peril shall exist when and for such period of time as the board of health and the mayor declare.

§ 17-111 Right of entry. The commissioner and his or her officers may, pursuant to a search warrant when required by law, enter, examine and inspect all vessels, premises, grounds, structures, buildings and under-

ground passages for compliance with the provisions of law enforced by the department.

§ 17-112 Acceptance of private funds. No grants, gifts, devises, legacies or bequests made to the city shall be accepted except with the approval of the commissioner.

## Title 18 - Parks

§ 18-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of parks, recreation and cultural affairs.

2. "Department" shall mean the department of parks, recreation and cultural affairs.

§ 18-102 Commissioner. The head of the department of parks, recreation and cultural affairs shall be the commissioner.

§ 18-103 Powers and duties of commissioner. Except with respect to the functions of the board of education, the commissioner shall have the power and it shall be his or her duty:

1. With respect to parks:

(a) to manage and care for all parks, squares and public places, the sidewalks immediately adjoining the same and all playgrounds, playground fixtures and other recreation properties, except those within the jurisdiction of the board of education;

(b) to prepare for the establishment and improvement of a park system for the city with regard to proper connections with the systems of federal, state and county parks and recreation areas in the city and counties adjacent to the city; and

(c) to maintain the beauty and utility of all parks, squares, public places, playgrounds and other recreational properties.

2. With respect to recreation:

(a) to plan, acquire, construct, improve and merge facilities for the recreation of the public;

(b) to plan, develop, conduct and supervise recreation programs for the public;

(c) to review and coordinate recreation activities and programs and facilities conducted by agencies of the city and the budget estimates submitted by such other agencies for such activities and make such recommendations to the mayor; and

(d) to undertake, subject to the approval of the mayor, and to enter into arrangements with other agencies of the city, state or federal government and to recommend to the mayor such arrangements with private, voluntary or commercial agencies, subject to the law, for the performance of any recreation functions conferred upon the department.

3. With respect to cultural affairs:

(a) to plan, acquire, design, construct, improve and manage facilities for the conduct of cultural activities by the city and, to the extent possible, to use the resources of other agencies to perform design and planning functions subject to the approval of such agencies;

(b) to plan, develop, conduct and supervise such cultural activities; and

(c) to foster coordination among city, state and federal agencies, other organizations and institutions with respect to cultural activities in the city.

§ 18-201 Art commission. There shall be an art commission. All members of the commission shall serve without compensation. The mayor shall appoint and fill vacancies. The chairperson shall be the commissioner of

parks, recreation and youth services. The commissioner shall accede to the rights, powers and duties within the city of Staten Island of the preceding arts commission of the city of New York.

## Title 19 - Transportation

§ 19-102 Commissioner. There shall be a department of transportation the head of which shall be the commissioner of transportation.

§ 19-103 Powers and duties of commissioner. The commissioner shall have control over and be responsible for all the functions and operations of the city relating to transportation including, without limitation, parking and traffic operations, highway operations, ferries and related facilities and mass transportation facilities.

§ 19-104 Parking and traffic operations. 1. The commissioner shall make rules and regulations for the conduct of vehicular and pedestrian traffic in the streets, squares, avenues, highways and parkways of the city. Violation of such rules shall be a traffic infraction triable by a judge in criminal court and also may be adjudicated pursuant to this title or pursuant to articles two-A and two-B of the vehicle and traffic law.

2. In an emergency, the police commissioner may suspend for a period of forty-eight hours the provision of any rule or procedure and shall immediately notify the commissioner of such suspension.

3. In order to expedite the movement of traffic or to safeguard pedestrians or property, a police officer may order a person to disregard any traffic signal or any regulation.

4. The commissioner shall establish, determine, control, install and maintain the type, design, size and location of any and all signs, signals and other devices indicating street names and other public places, and for guiding, directing or otherwise regulating vehicular and pedestrian traffic.

5. The commissioner shall make recommendations to the mayor as to the design and location of lighting devices, poles and fixtures, including intensity of illumination of streets and highways.

6. The commissioner shall prepare and submit to the mayor a proposed, comprehensive city traffic plan and the commissioner shall collect and compile traffic data, prepare engineering studies and surveys in regard to vehicular and pedestrian traffic and submit detailed reports to the mayor regarding such data. The commissioner shall also have authority to: (a) submit to the mayor from time to time recommendations and proposals for consideration by the mayor and other city agencies in regard to methods of ameliorating adverse traffic conditions which cannot be remedied by traffic regulations; (b) amend existing regulations and rules of any city agency which may affect traffic conditions in the city; (c) propose legislation which may be necessary to implement such proposals; and (d) recommend improvements of existing streets, locations of new streets, highways, parking garages, public parking areas, offstreet loading facilities and other related matters.

7. The commissioner shall coordinate efforts of and consider reports of public and private agencies and civic groups with regard to their suggestions on traffic control in the city. The commissioner shall prepare analyses of traffic accidents with a view to determining their causes and means for prevention and shall carry on educational activities for the purpose of promoting traffic safety in the city.

8. The commissioner shall establish parking meter zones for on-street and off-street parking; determine type, size and location of parking

meters; and fix the fees for parking in public parking areas, except that parking meter zones for both on-street and off-street parking shall not apply to vehicles operated by disabled persons displaying special vehicle identification cards issued by the commissioner.

9. The commissioner shall collect fees, fines and penalties for violation of parking rules and shall keep all monies in a special fund to be known as the "traffic improvement fund". The revenues in this special fund shall be used, upon authorization by the council for payment of all costs of purchase, rental, engineering, installation, operation, maintenance and repair of parking meters, the collection of coins, the enforcement of rules pertaining to parking, the collection of fines and penalties for rules violations or the payment of interest on, amortization of, or payment of any indebtedness contracted by the city in connection with the installation and operation of parking meters. Any revenues remaining after such payments are made shall be used for capital and other expenditures to ameliorate traffic conditions of the city.

10. The commissioner, in conjunction with the commissioner of finance, may enter into agreements with not more than two financing agencies to provide for the acceptance by the city of credit cards as an alternate means of payment of fines or fees incurred due to violation of any law, rule or regulation with regard to parking of a vehicle.

11. The commissioner shall have the power, concurrently with the police department, to enforce laws, rules and regulations with regard to all movement and conduct of vehicular and pedestrian traffic. The commissioner may employ, hire and retain officers or employees for the purpose of enforcing laws, rules and regulations with regard to regulating and controlling vehicular parking and movement of pedestrian and vehicular traffic. Such officers or agents are authorized to issue and serve tickets, summonses and complaints for traffic infractions.

12. The commissioner shall issue, upon application, a special vehicle identification permit to a Staten Island resident certified by the department of health as suffering from a permanent disability seriously impairing mobility, non-residents similarly certified may obtain vehicle identification for purposes of transportation to a school or place of employment in city. All applicants for such permit must possess an operator's or chauffeur's license with any restrictions indicating special restrictions, devices or equipment required for operation of the vehicle.

§ 19-105 Highway operations. The commissioner shall have charge and control of the following functions relating to the construction, maintenance and repair of public roads, streets, highways, parkways, bridges and tunnels: (i) regulating, grading, curbing, flagging and guttering of streets, including marginal streets, and the laying of crosswalks; (ii) designing, constructing, resurfacing and repairing all public roads, streets, highways and parkways; (iii) the relaying of all pavement removed for any cause; (iv) the filling of sunken lots, fencing vacant lots, digging down of lots and the licensing of vaults under sidewalks; (v) regulation of the use and transmission of gas, electricity, pneumatic power and steam for all purposes in, upon, across, over and under all streets, roads, avenues, parks and all public places; regulation of the construction of electric mains, conduits, conductors and subways in any streets, roads, avenues, parks or public places and the issuance of permits to builders and others to use or open a street; and to open the same for the purpose of carrying on the business of transmitting, conducting, using and selling gas, electricity or steam or for the service of pneumatic tubes, provided, however, this section is not to be

seen as to grant permission to open or use the streets except by persons or corporations otherwise duly authorized to carry on such business specified above; (vi) construction, alteration and maintenance of all bridges and tunnels. The commissioner shall issue a report to mayor, city council and city residents about the condition of the bridges and tunnels operated and maintained by the department with such report due on March first, as of December thirty-first of preceding calendar year. The report shall include a description of all capital and revenue budget funds appropriated for rehabilitation and maintenance of bridges and tunnels as well as the program developed by the commissioner for the maintenance of all bridges and tunnels in the city of Staten Island; (vii) removal of encroachments on public roads, streets, highways and parkways, with the exception of weed removal, grass cutting and clipping and other horticultural operations which are to be executed by the parks department, and de-icing and snow removal operations are to be carried out by the department of sanitation; (viii) clearing, grubbing, grading, filling or excavating of vacant lots and other land areas; (ix) installation of metal chain link fences or barriers on overpasses, footbridges, bridges or walkways; and (x) designing, constructing and maintaining a lighting system for streets, highways, parks and public places in the city.

§ 19-106 Ferries and related facilities. The commissioner shall maintain and operate the ferries of the city. The commissioner shall be responsible for designing, constructing, maintaining or controlling all ferry boats, ferry houses, ferry terminals and equipment; all wharf property and roads or streets adjacent to such wharves, ferry houses or terminals, including parking sites and related facilities. The commissioner shall have charge and control of all marine operations within the city and the power to regulate public and private ferry operations originating or terminating in the city. The commissioner shall establish tours of ferry facilities and their related operations as well as tours of the New York harbor at fees to be established by the commissioner and may publicize and advertise the same. The commissioner shall construct, operate and maintain marinas and public boat launching ramps and related ferry facilities and collect fees for the use of such facilities. Fees collected are to be deposited in a special fund for continued maintenance, operation or reconstruction of public marine facilities.

§ 19-107 Mass transportation facilities. The commissioner shall prepare or review plans and recommendations for the nature, construction, location, operation and financing of roads, highways, bridges, tunnels, railroads or other facilities for mass transportation for use, in whole or in part, within the city, whether or not the funds provided for such facilities are derived from the city treasury. The commissioner shall develop and coordinate planning and programming for all forms of mass transportation within Staten Island, whether or not transportation is within the sole operating jurisdiction of Staten Island. The commissioner shall make recommendations to the mayor, the Metropolitan Transportation Authority or any of its subsidiaries, the Port Authority of New York and New Jersey and other city, state and federal agencies concerning the mass transit needs of the city of Staten Island.

§ 19-108 Duties and obligations of a property owner with regard to sidewalks, fencing or filling of vacant lots or cutting down raised lots. The owner of any property, at his or her own cost shall:

1. Install, reconstruct, repave and repair the sidewalk in front of or abutting such property, to include intersection quadrant in the case of corner property; and

2. Fence any vacant lot comprising all or part of his or her property and fill any sunken lots on such property or cut down any raised lot or lots comprising all or part of the property whenever the transportation department shall so order. In the event a property owner fails to comply with such order or the provisions of this section, the transportation department may have the work performed at the expense of the owner.

§ 19-109 Right of entry. The commissioner may enter public or private property for the purpose of making surveys, borings or other investigations necessary for the performance of department duties. Refusal to permit such entry shall be triable by the judge in a criminal court of Staten Island.

## Title 20 - Consumer Affairs

§ 20-102 Definitions. Wherever used in this title:

1. "Commissioner" shall mean the commissioner of consumer and worker protection.

2. "Department" shall mean the department of consumer and worker protection.

3. "License" shall mean an authorization by the department of consumer and worker protection to carry on various activities within its jurisdiction, which may take the form of a license, permit, registration, certification or such other form as is designated under law, regulation or rule.

4. "Organization" shall mean a business entity, including but not limited to a corporation, trust, estate, partnership, cooperative, association, firm, club or society.

5. "Person" shall mean a natural person or an organization.

6. "Trade name" shall mean that name under which an organization or person solicits, engages in, conducts or transacts a business or activity.

§ 20-103 Powers of the commissioner. 1. The commissioner shall plan, make recommendations, conduct research and develop programs for consumer and worker education and protection, facilitate the exchange of information in consultation with agencies, federal and state officials, commercial interests, private groups and coordinate the consumer and worker protection activities of other city agencies.

2. The commissioner shall enforce all laws in relations to weights and measures.

3. The commissioner shall have control of granting, issuing, transferring, renewing, revoking, suspending and cancelling of all licenses and permits, except in the cases with respect to which any of said powers are conferred on other persons or agency by laws, and shall collect all fees for licenses.

All licenses or permits in effect on the date of establishment shall be continued until their date of expiration or sixty days, whichever shall be longer. Any license or permit expiring within a thirty-day period prior to the date of establishment shall be continued for a period of sixty days.

A licensee or permittee must notify and register with the department if the license or permit is to extend beyond sixty days of the date of establishment.

4. The commissioner shall enforce all laws relating to advertising and offering for sale and the sale of all commodities, goods, wares and services; in addition he or she shall receive complaints and initiate his or her own investigations and take appropriate action, including referral to a federal or state agency.

5. The commissioner shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of laws relating to deceptive or unconscionable trade practices.

## Title 21 - Human Services

§ 21-102 Commissioner. There shall be a department of human services the head of which shall be the commissioner of human services.

§ 21-103 Powers and duties. The commissioner shall have the powers and perform the duties of a commissioner of human services under the social services law, provided that no form of outdoor relief shall be dispensed by the city except under the provisions of a state or local law which shall specifically provide the method, manner and conditions of dispensing the same.

§ 21-104 Public institutions under the commissioner. The commissioner shall control, maintain and operate such institutions as are now or may be put under his or her control.

§ 21-202 Division for the aging. There shall be within the department a division for the aging.

§ 21-203 Power and duties. It shall be the power and duty of the division for the aging:

1. to stimulate community interest in the problems of the aging;

2. to promote public awareness of resources available for the aging, and to refer the public to appropriate departments and agencies of the city, state and federal governments for advice, assistance and available services in connection with particular problems;

3. to cooperate with and assist local neighborhoods in the development of programs and the establishment of local offices;

4. to disburse available city, state and federal funds to programs throughout the city and, when practical, coordinate such funds with available funding from the private sector;

5. to promulgate rules and regulations for the operation of facilities, services and programs under its jurisdiction; and

6. to maintain, operate and control such programs and facilities, as may be necessary or required for the proper administration of the division.

§ 21-301. Division for youth services. 1. There shall be within the department a division for youth services.

2. With respect to youth services the commissioner shall have all the powers and duties of a youth bureau as such bureau is described in article nineteen-A of the executive law and shall in addition have the following powers and duties:

(a) to disburse available city, state and federal, and private-sector, when applicable, funds to programs for youth throughout the city;

(b) to maintain, operate and control such youth programs and facilities as necessary; and

(c) to promulgate rules and regulations for the operation of facilities, services and programs within the department's jurisdiction.

§ 21-402 Division of homeless services. There shall be within the department a division of homeless services.

§ 21-403 Powers and duties; director. 1. The head of the division of homeless services shall be the director. The director shall have the powers and perform the duties of a commissioner of human services under the social services law for the purpose of fulfilling his or her responsibilities.

2. The director, in the performance of his or her functions, shall:

(a) be responsible for transitional housing and services provided by the city for eligible homeless families and individuals. The director shall encourage the participation of and receive proposals from the public and private sectors for the development of transitional housing and services for homeless families and individuals. In performing such duties, the director may develop and issue requests for such proposals and evaluate responses thereto, negotiate, award, and administer contracts, loans or other agreements, and obtain all necessary approvals. For-profit and not-for-profit entities shall be eligible to submit proposals, bid on contracts and other agreements, and apply for grants and loans;

(b) plan and implement a redesign and restructuring of the system for the provision of transitional housing and services for homeless families and individuals;

(c) in consultation with other appropriate governmental agencies, plan housing for homeless families and individuals;

(d) develop programs designed to improve access of homeless families and individuals to existing housing;

(e) maintain, repair and rehabilitate transitional housing owned, operated or managed by the division;

(f) establish performance criteria, goals and objectives with respect to contract providers and monitor and evaluate such performance; and

(g) in consultation with other appropriate governmental agencies, develop and operate outreach programs to identify and assist families and individuals who are homeless and living in public spaces and participate in the development of prevention programs to assist families and individuals who are in imminent danger of becoming homeless.

3. In addition, the director is authorized, in consultation with appropriate agencies, to provide any other services he or she deems necessary to implement and effectuate the provisions of this title.

## Title 22 - Economic Development

§ 22-102 Commissioner. The head of the department shall be the commissioner of economic development.

§ 22-103 Powers and duties of the commissioner. The commissioner shall have charge and control of and be responsible for all functions and operations of the city relating to business and economic development, the enhancement of economic development and financial opportunity for minority and women owned business enterprises and ensuring equal employment opportunity by city contractors.

1. Such powers and functions shall include, without limitation, the following:

(a) to establish business, industrial and commercial policies, programs and projects which affect the business, industrial, commercial or economic well-being, development, growth and expansion of the economic life of the city;

(b) to serve as liaison for the city with local development corporations, other not-for-profit corporations and all other entities involved in economic development within the city;

(c) to study, organize, promote, coordinate and carry out within or without the city, activities, projects and programs designed to encourage, stimulate and foster the well-being, development, growth and expansion of business, industry and commerce in the city, and to enhance and protect the economic life of the city;

(d) to assist, encourage and promote broadened employee ownership, particularly through the use of employee stock ownership plans and producer cooperatives, by conducting research, outreach and public information programs regarding such ownership; by providing technical assistance to employee groups exploring employee buyouts, and by ensuring that firms applying for financial assistance from any entity involved with economic development in the city shall be correctly advised as to the potential advantages of forming an employee stock ownership plan;

(e) to serve as a clearinghouse in connection with efforts to devise solutions for problems affecting business, industry or commerce in the city;

(f) to promote and encourage the location and development of markets for city products;

(g) to promote and encourage the location and development of new business and industry in the city, as well as the maintenance and expansion of existing business and industry in the city;

(h) to promote, coordinate and implement activities, projects and programs designed to attract foreign direct investment and promote overseas sales by firms in the city, and to otherwise encourage and stimulate the development of international business, commerce and trade in the city;

(i) to administer and promote development of foreign trade zones within the city;

(j) to study conditions affecting business, industry and commerce in the city, and collect, disseminate and make studies with regard to the information collected;

(k) to maintain a business information service in order to assist business and industry in the city and to encourage businesses outside the city to patronize the industrial establishments of the city;

(l) to make recommendations to the mayor concerning steps deemed advisable for the promotion and advancement of business prosperity in the city;

(m) to publicize the economic advantages and other factors which make the city a desirable location for businesses;

(n) to collect, compile and distribute information dealing with the facilities, advantages and attractions of the city and historic and scenic points and places of interest therein;

(o) to plan and conduct informational programs and publicity designed to attract tourists, vacationers, visitors and other interested persons to the city and its attractions;

(p) to encourage and cooperate with public and private agencies, organizations and groups to publicize the business and commercial advantages of the city;

(q) to cooperate with and assist any corporation, organization or agency, public or private, the objectives of which include the advancement of business, industry prosperity, expansion of existing business,

the creation of new job opportunities and provide support for any such efforts or purposes; and

(r) to issue permits for the taking of motion pictures, and for the taking of photographs and for the use or operation of television cameras or other transmitting television equipment in, on or about city property, streets, parks, piers, wharves, docks, bridges or tunnels.

2. The commissioner shall have the power and duty to exercise the functions of the city relating to the development, redevelopment, construction, operation, maintenance, management and regulation of public markets, wharf property, waterfront property and airports within the city, including, without limitation, the following:

(a) to have charge and control of the public markets of the city, to fix fees for services, licenses and privileges in connection therewith, to rent space and enter into leases therefor, and to regulate all facilities in use as public markets for the public health, safety and welfare;

(b) to have charge and control of wharf property and waterfront property owned by the city and of the building, repairing, altering, maintaining, strengthening, protecting, cleaning, dredging and deepening of such property; provided that the commissioner may designate parcels of waterfront property to be managed pursuant to this paragraph and leased pursuant to paragraph (g) of this subdivision, by the commissioner of general services and contracting, provided, any such designation to be made in writing and with approval of the mayor;

(c) to have power to enforce with respect to public markets, waterfront property and any structures thereon under its jurisdiction, the labor law and other such laws, rules or regulations as may govern any such activities undertaken, as described in paragraph (b) of this subdivision, and to establish and amend fees to be charged for the issuance of such permits or certificates of completion;

(d) to have power to regulate waterfront property and any structures on any waterfront property used in conjunction with commerce or navigation;

(e) to have power to regulate the use of marginal streets so that they may be used to best advantage in connection with waterfront property and to regulate by license or otherwise the transfer of goods and merchandise upon, over or under such streets;

(f) to lease, subject to council approval, any wharf property belonging to the city for purposes of commerce or in furtherance of navigation;

(g) to grant temporary permits, terminable at will, for a period not exceeding three years for purposes of commerce or navigation and not exceeding one year for other purposes;

(h) to set aside by order any wharf property owned by the city, which has not been leased, for general wharfage purposes or for a special kind of commerce and to revoke or modify such order at any time;

(i) to regulate the charges for wharfage, cranage and dockage of all vessels or floating structures using any wharf property, such rates to be fixed by rules of the commissioner;

(j) to sell, subject to the approval of the council, buildings, structures and other improvements on market property to a person leasing such property;

(k) to manage and promote the economic development of all airports, airplane landing sites, seaplane bases and heliports owned by the city and to lease such property, provided that no such lease may be authorized by the commissioner until a public hearing has been held and after

publication of notice in a newspaper of general circulation in the city at least thirty days prior to such hearing;

(l) to have charge and control of the regulation for the health and safety of the general public at all airports, airplane landing sites, seaplane bases, heliports, marginal streets and parking facilities owned by the city;

(m) to establish, amend and enforce rules for the proper care and use of all public markets, wharf property, airports, heliports, airplane landing sites or seaplane bases; the violation or failure to comply with any such enforcement order shall be triable in criminal court and punishable by not more than thirty days' imprisonment or a fine of not less than one hundred dollars nor more than five thousand dollars, or both;

(n) to have the exclusive power to regulate all privately owned airports, airplane landing sites, seaplane bases and heliports, the operations out of and into such bases, as well as the control of ground effect craft;

(o) to promote and encourage the expansion and development of the city as a center for intrastate, interstate and international freight transportation; and

(p) to administer and enforce the provisions of the joining resolution of the city in respect to any and all structures on waterfront property used in connection with the furtherance of waterfront commerce on navigation.

3. With respect to energy matters, the commissioner shall have the power and duty:

(a) to plan, formulate, coordinate and advance energy policy for the city;

(b) to analyze the energy and fuel needs of the city with respect to all types of energy, to prepare intermediate and long-range plans, goals and programs designed to meet such needs and to establish priorities among them;

(c) to develop, implement and manage energy-related programs for economic development and other purposes, including the administration of the public utility service and to exercise all of the functions, powers and duties of such public utility service; and

(d) to perform such other responsibilities with respect to energy matters, including responsibilities delegated elsewhere by the city charter, as the mayor shall direct.

§ 22-104 Waterfront plans. 1. No marginal street bulkhead line, pierhead line or other similar line demarcating the extent of waterfront development may be delineated, established or changed by the commissioner except in accordance with the provisions of the city charter. The commissioner may apply to the department of city planning to incorporate such existing plans for the waterfront into the city map pursuant to the procedure for review and approval of a change to the city map.

2. The commissioner may widen, open, construct, abandon or close any marginal street or avenue included in such waterfront plans and shall maintain the widened portion of such street and the widened portion of such street shall not be a public street. Before acting under this subdivision, the commissioner shall make a report to the department of city planning including a map showing the proposed changes, but if the department or, upon appeal of the action of the department, the appeals board does not approve such proposal then it must be approved by the council or the commissioner shall not proceed.

§ 22-201 Division of economic and financial opportunity. 1. There shall be a division of economic and financial opportunity within the department.

2. The purpose of the division shall be to enhance the ability of minority and women owned business enterprises to compete for city contracts, to enhance city agencies' awareness of such enterprises and to ensure their participation in the city procurement process.

3. In addition to the other purposes of this section, the division of economic and financial opportunity shall also administer any programs for small or locally-owned business enterprise programs as may be established by law.

§ 22-301 Division of labor services. 1. There shall be a division of labor services within the department and the commissioner shall administer the provisions of this section and enforce a citywide program to ensure that city contractors and subcontractors take appropriate action to ensure that women and minority group members are afforded equal employment opportunities, and that all persons are protected from discrimination prohibited under the provisions of federal, state and local laws regarding recruitment, employment, job assignment, promotion, upgrading, transfer, layoff, termination or rates of compensation.

2. The commissioner shall also monitor compliance by contractors with state and federal prevailing wage requirements.

§ 22-401 The city of Staten Island public utility service. The commissioner or his or her designee shall serve as the director of the public utility service established by provisions of the code of the preceding municipality.

§ 22-402 Authorization for public utility service. Pursuant to article fourteen-A of the general municipal law, the city hereby establishes a public utility service, as such term is defined in section three hundred sixty of such article, which is authorized to establish, construct, lease, purchase, own, acquire, use or operate facilities within or without the territorial limits of the city, for the purpose of furnishing to itself or for compensation to its inhabitants any service similar to that furnished by any public utility company specified in article four of the public service law. For such purpose the city may purchase electrical and other forms of energy from the state, or from any state agency, or other municipal corporation, or from any private or public corporation, and may sell or distribute such power to itself and to residential, commercial, industrial and other customers. The city shall possess any and all powers granted to a public utility service pursuant to article fourteen-A of the general municipal law and any other applicable provision of law.

§ 22-403 Acquisition of energy and facilities. The city shall contract for or otherwise purchase or acquire hydroelectric or other forms of energy as shall be available from the power authority of the state of New York, the state, any state agency, any other municipal corporation, or any private or public corporation, and shall arrange to use, lease or acquire the transmission, substation and distribution facilities necessary to furnish such power to the city and, for compensation, to residential, commercial, industrial and other customers; provided, however, that the city will not acquire or build any electric or gas transmission or distribution facilities which are parallel to, or duplicative of electric or gas transmission or distribution facilities of any utility companies within the city, nor take any action to impair any agreements, franchises, rights or obligations of any utility company within the city including, to provide safe, adequate and efficient

service to conduct its business in the city and to protect its assets unless so authorized by further local law and public referendum.

§ 22-404 Distribution and sale of energy. The city shall arrange with any utility companies for the distribution of energy through the use, lease, or acquisition of transmission, substation and distribution facilities within the service areas of such companies and for such companies to act on behalf of the city for collection of charges for such energy within such service areas, or for the sale of energy to such companies for resale to customers within the service areas of such companies.

§ 22-405 Rates. The fixing of rates for furnishing hydroelectric and other forms of energy to residential, commercial, industrial and other customers shall include consideration of (1) the actual cost to the city for the purchase, distribution and delivery of such energy to such customers, (2) the actual expenses necessary for administration of the public utility service, including expenses for research and development, and (3) any other costs or charges allowed under law, including but not limited to, losses of tax revenues resulting from the operation of the public utility service. Such rates shall be computed to provide revenue in an amount not less than that necessary to recover fully such costs and expenses. Such rates shall be subject to approval of the city council.

§ 22-406 Municipal energy fund. Revenues received from the operation of the public utility service shall be paid into a fund to be known as the municipal energy fund. The revenues paid into such fund shall not be revenues of the city, and payments from such fund shall be made without appropriation and shall not be included in the expense budget of the city. Nothing in this section shall prohibit the city from appropriating expense or capital funds in connection with the public utility service, nor shall payments from the municipal energy fund to the general fund be prohibited.

§ 22-501 Bureau of ports and trade. There shall be a bureau of ports and trade within the department of economic development.

§ 22-502 Definitions. As used in this title:

1. "Director" shall mean the director of the bureau of ports and trade.

2. "Bureau" shall mean the bureau of ports and trade.

§ 22-503 Director. The head of the bureau shall be the director of ports and trade.

§ 22-504 Powers and duties of the director. The director shall have the power and duty to:

1. exercise the powers of a commissioner of public markets and a city department of public markets under the agriculture and markets law;

2. have charge and control of the wharf property and waterfront property owned by the city to the extent permitted by state law;

3. have power to regulate waterfront property and the structures on the property such as wharves, piers, docks and bulkheads;

4. (a) have power to enforce, on waterfront property, the labor law and other such laws, rules and regulations as may govern dredging, filling, removal, safety, maintenance, sanitary conditions, use and occupancy of such structures on waterfront property; (b) issue permits or certificates of completion in reference thereto; and (c) establish or amend fees to be charged for the issuance of such permits with such fees to be established by rules of the director;

5. have power to regulate the use of marginal streets in connection with wharf property and to regulate by license any transfer of goods or merchandise on, over or under such marginal streets;

6. enforce provisions of the zoning resolutions of the city in respect to structures used in conjunction with waterfront commerce or navigation;

7. lease, subject to approval of or authorization by the city council, any wharf property belonging to the city for purposes of waterfront commerce or in furtherance of navigation; leases shall be for such terms and contain such conditions as provided by law and leases may be sold at public auction;

8. grant temporary permits to use and occupy any wharf property belonging to the city, such permits not to exceed one year and to terminate at will;

9. set aside by order any wharf property belonging to the city, which has not yet been leased, for any special kind of commerce, any class of vessel or for general wharfage purposes;

10. regulate charges for wharfage, cranage and dockage of all vessels or floating structures using any wharf property;

11. establish, amend and enforce all necessary rules for proper care of all public markets, wharf property, waterfront property, airports, airplane landing sites, seaplane bases and heliports owned by the city;

12. sell, subject to approval of or authorization by the city council, buildings, structures and other improvements on market property or wharf property;

13. manage and promote the economic development of all airports, airplane landing sites, seaplane bases and heliports owned by the city;

14. have charge and control of the regulation for the health and safety of the general public at all airports, airplane landing sites, seaplane bases, heliports, marginal streets and parking facilities appurtenant thereto owned by city;

15. have power to regulate all privately owned airports, airplane landing sites and seaplane bases;

16. promote, coordinate and implement projects, activities and programs designed to attract foreign investment and overseas sales and to otherwise encourage the development, growth and expansion of international business, commerce and trade in the city; and

17. administer and promote development of foreign trade zones in the city.

§ 22-505 Waterfront plans. All plans for the waterfront of the city are continued in effect and may be changed by the director pursuant to the procedure provided in this section.

The procedure for review and approval of any change to the plans for the water front shall be the same as in the case of a change to the city map and the director may apply to the department of city planning to incorporate plans for the waterfront pursuant to the procedure for review and approval of a change to the city map.

The director may widen, open, construct, abandon or close any marginal street or avenue included in any plans for changes and the director shall also maintain such widened portion of such streets. The director may proceed with any proposed changes only if the department of city planning approves the change; however, if the department of city planning does not approve, the director may not proceed unless the city council authorizes, by a two-thirds vote, the director to proceed.

The department of city planning shall act on such proposed changes within six weeks from the time of filing with the department of city

planning and if it does not act within the six weeks, the director may proceed with the changes.

## Title 23 - Reserved

## Title 24 - Environmental Protection

§ 24-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of environmental protection.

2. "Department" shall mean the department of environmental protection.

§ 24-102 Commissioner. 1. The head of the department of environmental protection shall be the commissioner of environmental protection.

2. The commissioner shall have the control of and be responsible for all those functions and operations of the city relating to (a) provision of adequate water supply; (b) disposal of sewage; (c) prevention of air, water and noise pollution; (d) response to emergencies caused by releases or threatened releases of hazardous substances; and (e) collection and management of information concerning the amount, location and nature of hazardous substances.

§ 24-103 Powers and duties of commissioner. The powers and duties of the commissioner shall include, without limitation, the following:

1. Water resources control. (a) The commissioner shall have charge and control, including the power to examine, of (i) all structures and property connected with the supply and distribution of water for public use, including all fire hydrants and water meters; (ii) furnishing the water supply and maintaining its quality, including ample reserve contingencies for future demand; and (iii) making and enforcing rules and regulations governing and restricting use of water supply.

(b) The commissioner may examine any sources of water supply of private companies supplying any portion of the city and may exercise superintendence, regulation and control in respect thereof.

(c) The commissioner shall regulate and control emissions into water of harmful or objectionable substances, contaminants or pollutants and shall enforce all laws and regulations with respect to such emissions.

(d) The commissioner may make investigations and studies as necessary for purpose of enforcement, control or elimination of pollution of the waters and, for such purpose, may compel witnesses and take their testimony under oath.

2. Sewage control. The commissioner shall have charge and control over location, construction, alteration, repair, maintenance and operation of all public and private sewers, intercepting sewers, disposal plants and drainage systems.

The commissioner may adopt regulations with regard to the discharge of sewage, refuse, factory waste and trade waste into the public sewers for such discharge. The commissioner may also restrict, regulate or prohibit the use of public sewers for such discharge and may prescribe civil penalties for the violation thereof.

3. Air resources control. The commissioner shall regulate and control the emission into the open air of harmful or objectionable substances, including but not limited to, smoke, soot, dust, fumes, ash, gas vapors and any products of combustion resulting from any fuel burning equipment.

The commissioner shall enforce all laws, rules and regulations with respect to such emissions. The commissioner shall make investigations and studies as necessary for controlling and eliminating air pollution and may compel witnesses and take their testimony under oath.

4. Noise pollution control. The commissioner shall enforce all laws, rules and regulations to eliminate noise pollution. The commissioner shall make investigations, compel witnesses and take their testimony under oath for such purposes.

The commissioner shall also undertake studies to determine permissible sound levels and shall correct problems related to noise control.

5. Environmental consequences. The commissioner may review and comment upon the environmental consequences of any activity that may have an impact on the physical aspects of the environment and may be responsible for investigating, evaluating and reporting such activities related to fuel supply and demand, alternative sources of energy and resource recovery.

6. Energy. The commissioner shall have the power and duty of formulating an energy policy for the city.

The commissioner shall analyze the needs of the city with regard to all kinds of energy and fuel needs. The commissioner shall prepare intermediate and long range plans, goals and programs to meet such needs. The commissioner shall also study, organize, promote and carry out activities and programs designed to encourage fuel and energy conservation.

7. Emergency response. The commissioner shall (a) respond to emergencies caused by releases of hazardous substances into the environment; (b) take measures to protect the public health or welfare; and (c) recover costs of such response measures from the responsible persons.

8. Community right-to-know. The commissioner shall (a) have the power to collect, compile and manage information concerning the nature of hazardous substances present in the city, and (b) make such information available to the public and to city personnel responsible for responding to hazardous substance emergencies.

§ 24-104 Environmental control board. 1. There shall be within the department an environmental control board, the chairperson of which shall be the commissioner, consisting of the commissioners of such departments as the mayor and council shall determine.

2. The environmental control board may adopt and amend regulations not inconsistent with any provision of law with regard to (a) regulating emissions or pollutants into the air or waters from any land or water sources, and (b) regulating or prohibiting the installation or construction of any equipment giving forth such emissions or pollutants.

3. The board, concurrent with the jurisdiction of the criminal courts of the city, shall enforce the provisions of the city charter, this code and the code of the preceding municipality which relate to (a) cleanliness of the streets; (b) disposal of wastes; (c) provision of adequate, pure supply of water; (d) prevention of air, water and noise pollution; (e) regulation of street peddling; (f) prevention of fire and danger to life as designated by the fire commissioner; (g) construction and inspection of structures of the city for sanitary conditions, safety, occupancy and as designated by the buildings and real property commissioner; (h) response to emergencies caused by release of hazardous substances; and (i) reporting of all information with regard to amount, labeling and location of all hazardous substances.

4. The board shall have concurrent jurisdiction with the board of health to enforce provisions of the health code which the board of health shall designate.

§ 24-105 Proceedings for violations. The environmental control board shall conduct proceedings for the adjudication of violations of the laws, rules and regulations enforced by the board.

The form and wording of notices of violation shall be prescribed by the board. Notices shall contain information advising the persons charged with the manner and the time in which such person has to admit or deny the charges. The notice shall also contain a warning that failure to plead in the time stated may result in a default decision entered against such person, or failure to plead may be deemed an admission of liability and shall be grounds for imposing a maximum penalty.

A judgment entered by the board pursuant to this section shall remain in full force and effect for eight years.

The board may not enter any final decision or order pursuant to this section unless the notice of violation shall have been served in the manner as is prescribed for service of process by the civil practice law and rules, with certain exceptions.

## Title 25 - Reserved

## Title 26 - Housing, Buildings, Construction and Maintenance

§ 26-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of buildings and real property.

2. "Department" shall mean the department of buildings and real property.

3. "Class" refers to the classification of buildings in the building code or other applicable laws and shall also refer to the terms "class" or "kinds" as used in the multiple dwelling law.

4. "Division" shall mean the division of housing preservation and development.

§ 26-102 Commissioner. The head of the department shall be the commissioner of buildings and real property.

§ 26-103 Department functions. The department shall enforce, with respect to buildings and structures, the building code, zoning resolutions, multiple dwelling law, labor law and other regulations that may govern the construction, alteration, maintenance, use, occupancy, safety, sanitary conditions or inspection of buildings or structures in the city.

The department shall perform the functions of the city of Staten Island relating to:

1. necessary legal action regarding designation of unsafe buildings or structures and the removal or remedy thereof by demolition or sealing;

2. the shoring of unsafe buildings or structures;

3. testing and approval of all power-operated cranes, derricks or other hoisting equipment used to raise and lower articles on the outside of buildings, not to include cranes and derricks used in industrial plants or yards;

4. location, construction, alteration and removal of signs, either illuminated or non-illuminated, attached to the exterior of any buildings;

5. all surface and sub-surface construction within the curbline, driveways and entrances thereto and the issuance of permits in reference thereto;

6. regulation, testing and inspection of gas and electricity used for light, heat or power purposes and all electric, gas and steam meters, electric wires and lights furnished for the city; and

7. regulation, inspection and testing of wiring and appliances for light, heat and power in or on any building or structure in the city, except that the jurisdiction of the department shall not extend to

waterfront property; which property and structures shall be under the jurisdiction of the department of ports and trade.

§ 26-104 Powers and duties. 1. There shall be a main office of the department.

2. Persons appointed as inspectors to perform functions of the department shall have such qualifications as prescribed by the commissioner; however, such qualifications shall include:

(a) a minimum of five years experience working at a construction trade;

(b) a license as a professional engineer or architect issued pursuant to the education law;

(c) a minimum of three years experience working at a construction trade and a minimum of two years formal training in a construction program in a college, technical college or trade school; or

(d) a minimum of two years experience working at a construction trade or a minimum two years formal education in a construction program in a college, trade or technical school and a minimum of three years participation in an apprentice inspection program approved by the commissioner and personnel director.

3. The commissioner shall have the following powers and duties, with respect to buildings and structures:

(a) to examine, approve or disapprove construction or alteration plans for any building or structure and to direct the inspection of such building or structure;

(b) to require that the construction or alteration of any building, including the installation or alteration of any service equipment therein, shall be in accordance with the provisions of laws and regulations applicable thereto; and

(c) to issue certificates of occupancy for any building or structure in the city, provided that:

(i) no building or structure may be occupied or used until a certificate of occupancy has been issued;

(ii) if a building or structure for which a certificate of occupancy has not previously been required or issued shall be altered in such a way as to now require a certificate, the building may not be used for any purpose until such certificate is issued;

(iii) no buildings altered or converted from one class to another shall be occupied until a certificate has been issued; and, in cases where the alteration did not necessitate the total vacating of the building, the certificate must be issued within thirty days of the completion of such work or the occupancy of the building may not continue;

(iv) the certificate of occupancy of a building or structure shall certify that such structure conforms to requirements of all laws, rules and regulations applicable thereto. Every certificate of occupancy shall be binding and remain binding and conclusive upon all agencies and officers of the city, unless vacated or modified by a court of competent jurisdiction or a board of appeals, and upon the department of labor of the state of New York;

(v) the commissioner may issue a temporary certificate of occupancy for any part of a building, provided that such temporary use or occupancy does not jeopardize life or property;

(vi) the commissioner may, in specific cases, permit experimental or demonstration construction to obtain knowledge and information; the commissioner may also submit reports on results thereof to the department of buildings and real property; and

(vii) the commissioner shall have the power and duty to conduct inquiries to assist him or her in his or her department duties where public safety is involved and he or she shall have subpoena power to compel witnesses, administer oaths, and compel production of books, papers and documents.

All certificates of occupancy in effect on the date of establishment are continued.

§ 26-105 Appeals. Appeals may be taken from the decisions of the commissioner to a three person board of appeals to be appointed by the mayor; one of whom shall be an architect and one of whom shall be a professional engineer.

§ 26-106 Inspection. The commissioner, or any officer of the department authorized in writing by the commissioner, may enter and inspect any building, structure, enclosure, premises or any part thereof or anything attached thereto.

Any refusal to permit such entry or inspection shall be a misdemeanor triable in criminal court and punishable, upon conviction, of not more than thirty days imprisonment, a fine of not more than one hundred dollars, or both.

§ 26-107 Public buildings and facilities. The department shall:

1. have charge and control over the plans and specifications for and the construction of all buildings and facilities paid for in whole or in part from the city treasury;

2. manage, alter, rejoin, operate, maintain and clean buildings, facilities and offices leased or occupied for public use by more than one city agency whose management, alteration, repair, operation, maintenance or cleaning is paid for in whole or in part from the city treasury, and as directed by the mayor, to perform services in space occupied for public use by a single city agency;

3. except for the provisions of title five of the code of the preceding municipality, employ, when in the commissioner's opinion such services are necessary or desirable, qualified consultants in private practice to aid the commissioner in carrying out his or her duties and responsibilities with respect to public buildings or facilities; such consulting or advisory services shall be performed under the supervision of the commissioner;

4. consult with the agencies for whose use the buildings or structures are intended in preparing and considering plans and specifications and in carrying out such plans and specifications, and to consider any recommendations made by such agency.

Notwithstanding the provisions of this section, the exercise of the powers and duties set forth herein shall be subject to the jurisdiction of any city agency performing urban renewal and public and publicly-aided housing functions to the extent, and in such areas, as directed by the mayor;

5. exercise and perform such other powers and duties as may be prescribed by law or delegated to him or her in relation to laboratory testing of commodities and construction materials.

§ 26-108 Real property. The department, with respect to real property, shall have power to:

1. purchase, lease, condemn or otherwise acquire real property for the city, subject to the joint approval or authorization of the mayor and the council, and to sell, lease, exchange or otherwise dispose of real property of the city, subject to the joint approval or authorization of the mayor and the council;

2. assign and reallocate to city agencies space and real property owned or leased by the city, to establish comprehensive and continuing programs and standards for utilization of space owned or leased by the city and to conduct surveys of space utilization;

3. manage all real property of the city not used for public purposes, including real property required for a public purpose and not being currently utilized for such purpose, except wharf property; provided, that the commissioner shall be responsible for the management, leasing or permitting of any parcels of wharf property and water front property as provided in any designation made by the commissioner of economic development;

4. exercise and perform such other powers and duties as may be prescribed by law or delegated to the commissioner in relation to the acquisition, disposition, management, site selection, assignment, demolition or other treatment of real property of the city;

5. employ, where desirable, managing agents to manage city properties and collect rents and pay bills; and

6. keep, maintain and annually update a master list of leases wherein the city or its agencies is a tenant.

§ 26-109 Building code. The building code which is in force in the preceding municipality on the date and time when this title takes effect and all existing provisions of the building code, including penalties affixed for violations, shall continue to be binding and in full force, except as amended from time to time by the city of Staten Island.

A copy of such code shall be on file in the office of the city clerk.

§ 26-201 Division of housing preservation and development. There shall be a division of housing preservation and development within the department.

§ 26-202 Powers and duties of the division. The division is vested with:

1. all functions of the city relating to the rehabilitation, maintenance, alteration and improvement of residential buildings and privately owned housing, pursuant to various articles of the private housing finance law; acting as liaison with the New York city rehabilitation mortgage insurance corporation; the execution of emergency repairs to and the sealing, removal and demolition of buildings, structures and private housing and the enforcement of the applicable provisions of the multiple dwelling law or others laws relating to the maintenance, use, occupancy, safety or sanitary condition of any building which is occupied, or intended to be occupied, as a home, residence or dwelling place;

2. functions and duties with respect to the relocation of tenants of real property and the selection of tenants for publicly owned or publicly aided housing;

3. all functions and duties of the city as related to slum clearance, slum prevention and urban renewal, neighborhood conservation, rehabilitation and prevention of blighted, deteriorated or unsanitary areas, and public housing, including regulation of rents in housing built with state or local financing; and

4. functions, rights and powers granted to or delegated to the housing and redevelopment board, the housing and development administration and the New York city housing authority.

§ 26-203 Housing preservation and development; commissioner. With respect to matters of housing preservation and development. The commissioner shall:

1. have the power to establish and administer programs designed to encourage the rehabilitation and preservation of existing housing;

2. administer laws authorizing tax exemption or tax abatement and process applications for such abatements and exemptions pursuant to provisions of this code;

3. manage and superintend all real property acquired by the city for housing and urban renewal purposes;

4. represent the city in carrying out the provisions of the private housing finance law and act as the "supervising agency" pursuant to the private housing finance law;

5. represent the city in carrying out the provisions of the general municipal law, including acquiring, leasing or disposing of real property;

6. undertake projects and exercise rights, powers, and privileges of the applicable public housing law;

7. impose and collect charges and fees for financing, regulation, supervision and audit of municipality-aided projects and loan programs administered by the commissioner, with such moneys to be set aside in an account for administrative expenses for the department;

8. acquire real property on behalf of other city agencies;

9. sell, lease, exchange or dispose of residential real property of the city, provided that no such sale shall be authorized without the mayor's and council's approval and until a public hearing has been held and public notice given;

10. manage and superintend all residential real property of the city not used for public purposes. The provisions of this subdivision are not applicable to wharf property, real property under jurisdiction of the Metropolitan Transportation Authority or the jurisdiction of the New York city housing authority or the jurisdiction of the Triborough Bridge and Tunnel Authority;

11. manage, demolish, seal or otherwise treat residential real property as necessary; and

12. employ professional community and other personnel to manage residential real property.

§ 26-204 Inspection. 1. Inspections. A housing maintenance inspector shall have such qualifications as prescribed by the department of personnel after consultation with the commissioner.

2. Entry. The commissioner or any inspector may enter and inspect any building, structure, enclosure, premises, or any part thereof and refusal to permit such inspection shall be a misdemeanor triable in criminal court, punishable by not more than thirty days imprisonment or a fine of not more than one hundred dollars or both.

§ 26-205 Acquisitions of real property. No purchase, lease, condemnation or acquisition of real property shall be authorized until (i) a public hearing has been held, and (ii) the department shall have received the joint approval or authorization of the mayor and the council.

In the case of acquisition by purchase or condemnation, a hearing as described above shall not be required if a public hearing is already being held with respect to such purchase pursuant to any other requirement of law.

## Title 27 - Health and Mental Hygiene

§ 27-101 Definitions. As used in this title:

1. "Commissioner" shall mean the commissioner of the department of health and mental hygiene.

2. "Department" shall mean the department of health and mental hygiene.

§ 27-102 Powers and duties of commissioner. The commissioner shall have the powers and duties of the department which shall include but shall not be limited to:

1. Determining the needs of the mentally disabled in the city, which determination shall include the review and evaluation of all mental hygiene services and facilities within the commissioner's jurisdiction;

2. Engaging in short-range, intermediate-range and long-range mental hygiene planning;

3. Developing and submitting to the mayor and council a program for the delivery of services for the developmentally disabled, including construction and operation of facilities;

4. Arranging with the approval of the mayor, for the rendition of services and operation of facilities by other agencies of the city;

5. Within the amounts appropriated therefor, entering into contracts for the rendition or operation of services and facilities on a per capita basis or otherwise;

6. Within the amounts appropriated therefor, executing such programs and maintaining such facilities as may be authorized under such appropriations;

7. Using the services and facilities of public or private voluntary institutions whenever practical, and encouraging all providers of services to cooperate with or participate in the program, whether by contract or otherwise;

8. Implementing and administering an inclusive citywide planning process for the delivery of services for the developmentally disabled; consistent with applicable law, standards and procedures for community participation at the local community level;

9. Encouraging the development and expansion of programs for the prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training of the developmentally disabled and for public education or developmental disability;

10. Establishing coordination and cooperation among all providers of services, coordinating the department's program with the program of the state department of mental hygiene so that there is a continuity of care among all providers of services; and seeking to cooperate by mutual agreement with the state department of mental hygiene and their representatives in preadmission screening and in post-hospital care of persons suffering from developmental disability;

11. Making policy and planning for, monitoring, evaluating and exercising general supervision over all services and facilities for the developmentally disabled within the commissioner's jurisdiction; and exercising general supervisory authority through the promulgation of appropriate standards consistent with accepted professional practices for care and treatment of patients;

12. To the extent necessary, when not inconsistent with any other law, arranging for the visitation, inspection and investigation of all providers of services, by the department or otherwise;

13. Conducting such inquiries as may be useful, including investigations into individual patient care, in performing the functions of the department and for such purpose the commissioner shall have subpoena power to compel the attendance of witnesses, to administer oaths and to compel the production of books, papers and documents and consistent with

the provisions of the mental hygiene law, having access to otherwise confidential patient records, provided such information is requested pursuant to the functions, powers and duties conferred upon the commissioner by law;

14. Submitting all materials required by the mental hygiene law for purposes of state reimbursement;

15. Serving as a member of such state or federally authorized committees as may be appropriate to the discharge of the commissioner's functions;

16. Performing such other acts as may be necessary and proper to carry out the provisions of this title and the purposes of the mental hygiene law;

17. Develop, promote, provide, coordinate and evaluate addiction programs for the prevention of addiction, treatment and rehabilitation for persons addicted to narcotics and other dangerous drugs, including, but not limited to, the following functions:

(a) participate in cooperative efforts of federal, state, regional and city agencies and programs dealing with the problems of addiction to narcotics and other dangerous drugs;

(b) evaluate present and proposed research designs, demonstration projects, treatment and service programs and other requests related to such prevention and care, before public funds are made available therefor;

(c) promote or provide research and demonstration projects designed to obtain information relating to the prevention of addiction and the related treatment provided to drug addicts by public or voluntary private agencies supported by city funds;

(d) promote or provide an educational and prevention program to acquaint the public with the problems of addiction;

(e) promote or provide treatment agents for persons addicted to narcotics, including, but not limited to, drug free programs, chemotherapeutic programs and a school based drug prevention program;

(f) annually report to the city council, by March first as of the preceding December thirty-first, on all treatment agents promoted or provided during the year and proposed to be provided or promoted during the current year, with particular attention given to the balance between the treatment agents and their relative effectiveness; and

(g) promote or provide training programs for persons in public or voluntary private agencies and institutions engaged in the prevention, treatment and rehabilitation of persons addicted to narcotics.

§ 27-103 Functions of the department. Except as otherwise provided by this title and law, the department shall perform all those functions and operations that relate to health and mental hygiene related needs of the people of the city.

§ 27-104 Construction clause. The provisions of this title shall be carried out subject to and in conjunction with the provisions of the mental hygiene law.

§ 15-001. The sum of six million dollars ($6,000,000), or so much thereof as may be necessary, is hereby appropriated as an advance out of any moneys in the general fund to the credit of the local assistance account not otherwise appropriated and shall be made immediately available, for the expenses of the city of Staten Island, in carrying out the provisions of this act relating to the transition government and establishment of such city. Notwithstanding any provision of law such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved in the manner prescribed by law. Such advance

shall be repaid from funds which shall be withheld by the state comptroller in equal payments over a period of five years out of the first moneys available for the next succeeding payments of state aid apportioned to the city of Staten Island as per capita aid for the support of local government pursuant to section 54 of the state finance law.

§ 15-002. The sum of one million dollars ($1,000,000), or so much thereof as may be necessary, is hereby appropriated as an advance out of any moneys in the general fund to the credit of the local assistance account not otherwise appropriated and shall be made immediately available, for the expenses of the city school district of the city of Staten Island, in carrying out the provisions of this act relating to the establishment of the city school district of such city. Notwithstanding any provision of law such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved in the manner prescribed by law. Such advance shall be repaid from funds which shall be withheld by the state comptroller in equal payments over a period of five years out of the first moneys available for the next succeeding payments of education aid apportioned to the city of Staten Island as aid for the support of education.

§ 16-001. Severability. The provisions of this act shall be severable, and if the application of any clause, sentence, paragraph, subdivision, section or part of this act to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not necessarily affect, impair or invalidate the application of any such clause, sentence, paragraph, subdivision, section, part of this act or remainder thereof, as the case may be, to any other person or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 17-001. This act shall take effect immediately; provided, however, that:

(a) the provisions of sections 7-009, 7-010, 13-001, 15-001 and 15-002 of this act shall take effect on the first of January next succeeding the date on which it shall have become a law;

(b) the provisions of sections 7-001 through 7-008, 8-001 through 8-024, 9-001 through 9-012, 9-050 through 9-053, 10-001 through 10-008, 11-001, 12-001 through 12-020 and 14-001 of this act shall take effect on the first of July in the second year next succeeding the date on which it shall have become a law;

(b-1) the amendments made to subdivisions 8 and 14 of section 2554 of the education law by sections 4-007 and 4-008 of this act, respectively, shall take effect upon the revival of such subdivisions as provided in section 34 of chapter 91 of the laws of 2002, as amended;

(c) provided that the amendments to paragraphs (a), (b), (c), (d), (e), and (f) of subdivision 2 of section 209 of the social services law made by section 8-021 of this act shall take effect on the same date and same manner as section 2 of part Z of chapter 56 of the laws of 2023, takes effect;

(d) the amendments to the second undesignated paragraph of subdivision 4 of section 246 of the executive law made by section 8-004 of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision (aa) of section 427 of chapter 55 of the laws of 1992, as amended, when upon such date the provisions of section 8-004-a of this act shall take effect; and

(e) provided that the amendments made to sections 257-c, 262, 266 and 267 of the executive law made by sections 8-007, 8-008, 8-009 and 8-010 of this act shall not affect the expiration or repeal of such sections and shall be deemed expired and repealed therewith.