

# STATE OF NEW YORK

2195

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

Introduced by M. of A. KIM -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to franchise tax on banking corporations

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

Section 1. The tax law is amended by adding a new article 32 to read as follows:

### ARTICLE 32

#### FRANCHISE TAX ON BANKING CORPORATIONS

##### Section 1450. General definitions.

1451. Imposition of tax.

1452. Banking corporation defined; exempt corporations.

1453. Computations of entire net income.

1453-A. Computation of alternative entire net income.

1454. Allocation.

1455. Computation of tax.

1455-A. Tax surcharge.

1455-B. Temporary metropolitan transportation business tax surcharge on banks.

1456. Credits.

1460. Declarations of estimated tax.

1461. Payments of estimated tax.

1462. Returns.

1463. Payment of tax.

1466. Deposit and disposition of revenue.

1467. Secrecy required of officials; penalty for violation.

1468. Procedural provisions.

##### § 1450. General definitions. As used in this article:

(a) The word "taxpayer" means a corporation or association subject to a tax imposed by this article.

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

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1 (b) The phrase "taxable year" means the taxpayer's taxable year for  
2 federal income tax purposes, or the part thereof during which the  
3 taxpayer is subject to the tax imposed by this article.

4 (c) The term "international banking facility" shall mean an interna-  
5 tional banking facility located in New York state and shall have the  
6 same meaning as is set forth in the New York state banking law or regu-  
7 lations of the New York state department of financial services or as is  
8 set forth in the laws of the United States or regulations of the board  
9 of governors of the federal reserve system.

10 (d) The term "subsidiary" means a corporation or association of which  
11 over fifty percent of the number of shares of stock entitling the hold-  
12 ers thereof to vote for the election of directors or trustees is owned  
13 by the taxpayer.

14 (e) The term "subsidiary capital" means investments in the stock of  
15 subsidiaries and any indebtedness from subsidiaries, exclusive of  
16 accounts receivable acquired in the ordinary course of trade or business  
17 for services rendered or for sales of property held primarily for sale  
18 to customers, whether or not evidenced by written instrument, on which  
19 interest is not claimed and deducted by the subsidiary for purposes of  
20 taxation under this article, article nine-A or thirty-three of this  
21 chapter, provided, however, there shall be deducted from subsidiary  
22 capital any liabilities payable by their terms on demand or within one  
23 year from the date incurred, other than loans or advances outstanding  
24 for more than a year as of any date during the year covered by the  
25 return, which are attributable to subsidiary capital.

26 (f) The terms "New York S corporation", "New York S year", "New York S  
27 election", "New York C corporation", "New York C year", "termination  
28 year", "S short year", "C short year", and "New York S termination year"  
29 shall have the same meaning as those terms have under subdivision one-A  
30 of section two hundred eight of this chapter, except that references in  
31 such subdivision to article nine-A of this chapter shall be read as  
32 references to this article.

33 (g) The term "QSSS" means a corporation which is a qualified subchap-  
34 ter S subsidiary as defined in subparagraph (B) of paragraph three of  
35 subsection (b) of section thirteen hundred sixty-one of the internal  
36 revenue code. The term "exempt QSSS" means a QSSS exempt from tax under  
37 this article as provided in subsection (o) of section fourteen hundred  
38 fifty-three of this article, or a QSSS described in clause (i) of  
39 subparagraph (B) of paragraph two of subsection (o) of section fourteen  
40 hundred fifty-three, wherein the parent corporation of the QSSS is  
41 subject to tax under this article, and the assets, liabilities, income  
42 and deductions of the QSSS are treated as the assets, liabilities,  
43 income and deductions of the parent corporation. Where a QSSS is an  
44 exempt QSSS, then for all purposes under this article:

45 (1) the assets, liabilities, income, deductions, property, payroll,  
46 receipts, capital, credits, and all other tax attributes and elements of  
47 economic activity of the QSSS shall be deemed to be those of the parent  
48 corporation,

49 (2) the stocks, bonds and other securities issued by, and any indebt-  
50 edness from, the QSSS shall not be subsidiary capital of the parent  
51 corporation,

52 (3) transactions between the parent corporation and the QSSS, includ-  
53 ing the payment of interest and dividends, shall not be taken into  
54 account, and

55 (4) general executive officers of the QSSS shall be deemed to be  
56 general executive officers of the parent corporation.

1 (h) The term "financial holding company" means a corporation that,  
2 pursuant to subsection (1) of section 4 of the federal bank holding  
3 company act of nineteen hundred fifty-six, as amended, has filed with  
4 the federal reserve board a written declaration that the corporation  
5 elects to be a financial holding company and whose election has not been  
6 found to be ineffective by the federal reserve board.

7 § 1451. Imposition of tax. (a) For the privilege of exercising its  
8 franchise or doing business in this state in a corporate or organized  
9 capacity, a tax, computed under section fourteen hundred fifty-five of  
10 this article, is hereby annually imposed on every banking corporation  
11 for each of its taxable years, or any part thereof, beginning on or  
12 after January first, nineteen hundred seventy-three.

13 (b) In the case of a taxpayer whose taxable year is other than a  
14 calendar year, there is hereby imposed a tax for the privilege of exer-  
15 cising its franchise or doing business in this state in a corporate or  
16 organized capacity for the period beginning January first, nineteen  
17 hundred seventy-three and extending through the subsequent part of its  
18 first such taxable year ending after such date. Such tax shall be  
19 computed under section fourteen hundred fifty-five of this article on  
20 the basis of such taxpayer's entire net income, or other applicable  
21 basis as the case may be, for such period and shall be paid with a  
22 return which shall be separately filed with the tax commission not later  
23 than the fifteenth day of the third month succeeding the close of such  
24 period. The requirements of sections fourteen hundred sixty and fourteen  
25 hundred sixty-one of this article, relating to declarations and payments  
26 of estimated tax, except subsection (a) of section fourteen hundred  
27 sixty-one of this article, shall not be applicable to the tax imposed by  
28 this subsection.

29 (c)(1) A banking corporation is doing business in this state in a  
30 corporate or organized capacity if (i) it has issued credit cards to one  
31 thousand or more customers who have a mailing address within this state  
32 as of the last day of its taxable year, (ii) it has merchant customer  
33 contracts with merchants and the total number of locations covered by  
34 those contracts equals one thousand or more locations in this state to  
35 whom the banking corporation remitted payments for credit card trans-  
36 actions during the taxable year, (iii) it has receipts of one million  
37 dollars or more in the taxable year from its customers who have been  
38 issued credit cards by the banking corporation and have a mailing  
39 address within this state, (iv) it has receipts of one million dollars  
40 or more arising from merchant customer contracts with merchants relating  
41 to locations in this state, or (v) the sum of the number of customers  
42 described in subparagraph (i) of this paragraph plus the number of  
43 locations covered by its contracts described in subparagraph (ii) of  
44 this paragraph equals one thousand or more, or the amount of its  
45 receipts described in subparagraphs (iii) and (iv) of this paragraph  
46 equals one million dollars or more. For purposes of this paragraph,  
47 receipts from processing credit card transactions for merchants include  
48 merchant discount fees received by the banking corporation.

49 (2) As used in this subsection, the term "credit card" includes bank,  
50 credit, travel and entertainment cards.

51 § 1452. Banking corporation defined; exempt corporations. (a) For the  
52 purpose of this article, a banking corporation means:

53 (1) Every corporation or association organized under the laws of this  
54 state which is authorized to do a banking business, or which is doing a  
55 banking business;

1 (2) every corporation or association organized under the laws of any  
2 other state or country which is doing a banking business;

3 (3) every national banking association organized under the authority  
4 of the United States which is doing a banking business;

5 (4) every federal savings bank which is doing a banking business;

6 (5) every federal savings and loan association which is doing a bank-  
7 ing business;

8 (6) a production credit association organized under the federal farm  
9 credit act of nineteen hundred thirty-three, which is doing a banking  
10 business and all of whose stock held by the federal production credit  
11 corporation has been retired;

12 (7) every other corporation or association organized under the author-  
13 ity of the United States which is doing a banking business;

14 (8) the mortgage facilities corporation created by chapter five  
15 hundred sixty-four of the laws of nineteen hundred fifty-six;

16 (9) any corporation sixty-five percent or more of whose voting stock  
17 is owned or controlled, directly or indirectly, by a corporation or  
18 corporations subject to article three-A of the banking law, or regis-  
19 tered under the federal bank holding company act of nineteen hundred  
20 fifty-six, as amended, or registered as a savings and loan holding  
21 company (but excluding a diversified savings and loan holding company)  
22 under the federal national housing act, as amended, or by a corporation  
23 or corporations described in any of the foregoing paragraphs of this  
24 subsection, provided the corporation whose voting stock is so owned or  
25 controlled is principally engaged in a business, regardless of where  
26 conducted, which (i) might be lawfully conducted by a corporation  
27 subject to article three of the banking law or by a national banking  
28 association, or (ii) is so closely related to banking or managing or  
29 controlling banks as to be a proper incident thereto, as set forth in  
30 paragraph eight of subsection (c) or subparagraph (F) of paragraph four  
31 of subsection (k) of section four of the federal bank holding company  
32 act of nineteen hundred fifty-six, as amended, or (iii) holds and  
33 manages investment assets, including but not limited to bonds, notes,  
34 debentures and other obligations for the payment of money, stocks, part-  
35 nership interests or other equity interests, and other investment secu-  
36 rities and which is not a business described in subparagraph (i) or (ii)  
37 of this paragraph; and provided, further, that in no event shall a  
38 corporation principally engaged in a business described in section one  
39 hundred eighty-three or one hundred eighty-four, or section one hundred  
40 eighty-six as it was in effect on December thirty-first, nineteen  
41 hundred ninety-nine, of this chapter be subject to the tax imposed under  
42 this article if any of its business receipts from such principally  
43 engaged in business are from other than a corporation (A) which owns or  
44 controls, directly or indirectly, sixty-five percent or more of its  
45 voting stock, or (B) sixty-five percent or more of whose voting stock is  
46 owned or controlled, directly or indirectly, by the corporation engaged  
47 in such business, or (C) sixty-five percent or more of whose voting  
48 stock is owned or controlled, directly or indirectly, by the same inter-  
49 est.

50 (b) Banking business defined. The words "banking business" as used in  
51 this section mean such business as a corporation or association may be  
52 created to do under article three, three-B, five, five-A, five-C, six or  
53 ten of the banking law or any business which a corporation or associ-  
54 ation is authorized by such article to do. However, with respect to a  
55 national banking association organized under the authority of the United  
56 States, a federal savings bank, a federal savings and loan association

1 or a production credit association, the words "banking business" as used  
2 in this section mean such business as a national banking association,  
3 federal savings bank, federal savings and loan association or production  
4 credit association, respectively, may be created to do or is authorized  
5 to do under the laws of the United States or this state. The words  
6 "banking business" as used in this section shall also mean such business  
7 as any corporation or association organized under the authority of the  
8 United States or organized under the laws of any other state or country  
9 has authority to do which is substantially similar to the business which  
10 a corporation or association may be created to do under article three,  
11 three-B, five, five-A, five-C, six or ten of the banking law or any  
12 business which a corporation or association is authorized by such arti-  
13 cle to do.

14 (c) Exempt corporations. A trust company all of whose capital stock is  
15 owned by twenty or more savings banks organized under New York law shall  
16 be exempt from the tax under this article.

17 (d) Corporations taxable under article nine-A. Notwithstanding the  
18 provisions of this article, all corporations of classes now or hereto-  
19 fore taxable under article nine-A of this chapter shall continue to be  
20 taxable under such article nine-A, except: (1) corporations organized  
21 under article five-A of the banking law; (2) corporations subject to  
22 article three-A of the banking law, or registered under the federal bank  
23 holding company act of nineteen hundred fifty-six, as amended, or regis-  
24 tered as a savings and loan holding company (but excluding a diversified  
25 savings and loan holding company) under the federal national housing  
26 act, as amended, which make a combined return under the provisions of  
27 subsection (f) of section fourteen hundred sixty-two of this article;  
28 (3) banking corporations described in paragraph nine of subsection (a)  
29 of this section; (4) any captive REIT or captive RIC that is required to  
30 be included in a combined return under the provisions of subsection (f)  
31 of section fourteen hundred sixty-two of this article; and (5) any over-  
32 capitalized captive insurance company required to be included in a  
33 combined return under subsection (f) of section fourteen hundred sixty-  
34 two of this article. Provided, however, that a corporation described in  
35 paragraph three of this subsection which was subject to the tax imposed  
36 by article nine-A of this chapter for its taxable year ending during  
37 nineteen hundred eighty-four may, on or before the due date for filing  
38 its return (determined with regard to extensions) for its taxable year  
39 ending during nineteen hundred eighty-five, make a one time election to  
40 continue to be taxable under such article nine-A. Such election shall  
41 continue to be in effect until revoked by the taxpayer. In no event  
42 shall such election or revocation be for a part of a taxable year.

43 (e) Corporations taxable under article thirty-three. Except for corpo-  
44 rations described in subsection (1) of section fourteen hundred fifty-  
45 three of this article, corporations liable to tax under article thirty-  
46 three of this chapter shall not be subject to tax under this article.

47 (f) For exemption from tax of a qualified subchapter S subsidiary, see  
48 subsection (o) of section fourteen hundred fifty-three of this article.

49 (g) A banking corporation organized under the laws of a country, or  
50 any political subdivision thereof, other than the United States shall  
51 not be deemed to be doing business in this state under this article if  
52 its activities in this state are limited solely to (1) investing or  
53 trading in stocks and securities for its own account within the meaning  
54 of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of  
55 section eight hundred sixty-four of the internal revenue code or (2)  
56 investing or trading in commodities for its own account within the mean-



1 ing of clause (ii) of subparagraph (B) of paragraph (2) of subsection  
2 (b) of section eight hundred sixty-four of the internal revenue code or  
3 (3) any combination of activities described in paragraphs one and two of  
4 this subsection.

5 (h) Transitional provisions relating to the enactment and implementa-  
6 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
7 to the contrary contained in this section other than subsection (n) of  
8 this section, a corporation that was in existence before January first,  
9 two thousand and was subject to tax under such article nine-A of this  
10 chapter for its last taxable year beginning before January first, two  
11 thousand, shall continue to be taxable under such article nine-A for all  
12 taxable years beginning on or after January first, two thousand and  
13 before January first, two thousand one. The preceding sentence shall not  
14 apply to any taxable year during which such corporation is a banking  
15 corporation described in paragraphs one through eight of subsection (a)  
16 of this section. Notwithstanding anything to the contrary contained in  
17 this section other than subsection (n) of this section, a banking corpo-  
18 ration that was in existence before January first, two thousand and was  
19 subject to tax under this article for its last taxable year beginning  
20 before January first, two thousand, shall continue to be taxable under  
21 this article for all taxable years beginning on or after January first,  
22 two thousand and before January first, two thousand one. Provided,  
23 however, that nothing in this subsection shall prohibit a corporation  
24 that elected pursuant to subsection (d) of this section to be taxable  
25 under article nine-A of this chapter from revoking that election in  
26 accordance with such subsection (d).

27 For purposes of this paragraph, a corporation shall be considered to  
28 be subject to tax under article nine-A of this chapter for a taxable  
29 year if such corporation was not a taxpayer but was properly included in  
30 a combined report filed pursuant to section two hundred eleven of this  
31 chapter for such taxable year and a corporation shall be considered to  
32 be subject to tax under this article for a taxable year if such corpo-  
33 ration was not a taxpayer but was properly included in a combined return  
34 filed pursuant to subsection (f) or (g) of section fourteen hundred  
35 sixty-two of this article for such taxable year. A corporation that was  
36 in existence before January first, two thousand but first becomes a  
37 taxpayer in a taxable year beginning on or after January first, two  
38 thousand and before January first, two thousand one, shall be considered  
39 for purposes of this paragraph to have been subject to tax under article  
40 nine-A of this chapter for its last taxable year beginning before Janu-  
41 ary first, two thousand if such corporation would have been subject to  
42 tax under such article for such taxable year if it had been a taxpayer  
43 during such taxable year. A corporation that was in existence before  
44 January first, two thousand but first becomes a taxpayer in a taxable  
45 year beginning on or after January first, two thousand and before Janu-  
46 ary first, two thousand one, shall be considered for purposes of this  
47 paragraph to have been subject to tax under this article for its last  
48 taxable year beginning before January first, two thousand if such corpo-  
49 ration would have been subject to tax under this article for such taxa-  
50 ble year if it had been a taxpayer during such taxable year.

51 (2) Notwithstanding anything to the contrary contained in this section  
52 other than subsection (n) of this section, a corporation formed on or  
53 after January first, two thousand and before January first, two thousand  
54 one may elect to be subject to tax under this article or under article  
55 nine-A of this chapter for its first taxable year beginning on or after  
56 January first, two thousand and before January first, two thousand one

1 in which either (i) sixty-five percent or more of its voting stock is  
2 owned or controlled, directly or indirectly by a financial holding  
3 company, provided the corporation whose voting stock is so owned or  
4 controlled is principally engaged in activities that are described in  
5 section 4(k)(4) or 4(k)(5) of the federal bank holding company act of  
6 nineteen hundred fifty-six, as amended and the regulations promulgated  
7 pursuant to the authority of such section, or (ii) it is a financial  
8 subsidiary. An election under this paragraph may not be made by a corpo-  
9 ration described in paragraphs one through eight of subsection (a) of  
10 this section or in subsection (e) of this section. In addition, an  
11 election under this paragraph may not be made by a corporation that is a  
12 party to a reorganization, as defined in subsection (a) of section 368  
13 of the internal revenue code of 1986, as amended, of a corporation  
14 described in paragraph one of this subsection if both corporations were  
15 sixty-five percent or more owned or controlled, directly or indirectly,  
16 by the same interests at the time of the reorganization.

17 An election under this paragraph must be made by the taxpayer on or  
18 before the due date for filing its return (determined with regard to  
19 extensions of time for filing) for the applicable taxable year. The  
20 election to be taxed under article nine-A of this chapter shall be made  
21 by the taxpayer by filing the report required pursuant to section two  
22 hundred eleven of this chapter and the election to be taxed under this  
23 article shall be made by the taxpayer by filing the return required  
24 pursuant to section fourteen hundred sixty-two of this article. Any  
25 election made pursuant to this paragraph shall be irrevocable and shall  
26 apply to each subsequent taxable year beginning on or after January  
27 first, two thousand and before January first, two thousand one, provided  
28 that the stock ownership requirements described in subparagraph (i) of  
29 this paragraph are met or such corporation described in subparagraph  
30 (ii) of this paragraph continues as a financial subsidiary.

31 (3) For purposes of this section, a financial subsidiary means a  
32 corporation (i) sixty-five percent or more of whose voting stock is  
33 owned or controlled, directly or indirectly by a banking corporation  
34 described in paragraph one, two or three of subsection (a) of this  
35 section and (ii) is described in section 5136A(g) of the revised stat-  
36 utes of the United States or section 46 of the federal deposit insurance  
37 act. For purposes of this article, the term "banking corporation" shall  
38 include a corporation electing to be taxed under this article pursuant  
39 to paragraph two of this subsection for so long as such election shall  
40 be in effect.

41 (i) Transitional provisions relating to the enactment and implementa-  
42 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
43 to the contrary contained in this section other than subsection (n) of  
44 this section, a corporation that was in existence before January first,  
45 two thousand one and was subject to tax under article nine-A of this  
46 chapter for its last taxable year beginning before January first, two  
47 thousand one, shall continue to be taxable under article nine-A for all  
48 taxable years beginning on or after January first, two thousand one and  
49 before January first, two thousand three. The preceding sentence shall  
50 not apply to any taxable year during which such corporation is a banking  
51 corporation described in paragraphs one through eight of subsection (a)  
52 of this section. Notwithstanding anything to the contrary contained in  
53 this section other than subsection (n) of this section, a banking corpo-  
54 ration that was in existence before January first, two thousand one and  
55 was subject to tax under this article for its last taxable year begin-  
56 ning before January first, two thousand one, shall continue to be taxa-

1 ble under this article for all taxable years beginning on or after Janu-  
2 ary first, two thousand one and before January first, two thousand  
3 three. Provided, however, that nothing in this subsection shall prohibit  
4 a corporation that elected pursuant to subsection (d) of this section to  
5 be taxable under article nine-A of this chapter from revoking that  
6 election in accordance with such subsection (d).

7 For purposes of this paragraph, a corporation shall be considered to  
8 be subject to tax under article nine-A of this chapter for a taxable  
9 year if such corporation was not a taxpayer but was properly included in  
10 a combined report filed pursuant to section two hundred eleven of this  
11 chapter for such taxable year and a corporation shall be considered to  
12 be subject to tax under this article for a taxable year if such corpo-  
13 ration was not a taxpayer but was properly included in a combined return  
14 filed pursuant to subsection (f) or (g) of section fourteen hundred  
15 sixty-two of this article for such taxable year. A corporation that was  
16 in existence before January first, two thousand one but first becomes a  
17 taxpayer in a taxable year beginning on or after January first, two  
18 thousand one and before January first, two thousand three, shall be  
19 considered for purposes of this paragraph to have been subject to tax  
20 under article nine-A of this chapter for its last taxable year beginning  
21 before January first, two thousand one if such corporation would have  
22 been subject to tax under such article for such taxable year if it had  
23 been a taxpayer during such taxable year. A corporation that was in  
24 existence before January first, two thousand one but first becomes a  
25 taxpayer in a taxable year beginning on or after January first, two  
26 thousand one and before January first, two thousand three, shall be  
27 considered for purposes of this paragraph to have been subject to tax  
28 under this article for its last taxable year beginning before January  
29 first, two thousand one if such corporation would have been subject to  
30 tax under this article for such taxable year if it had been a taxpayer  
31 during such taxable year.

32 (2) Notwithstanding anything to the contrary contained in this section  
33 other than subsection (n) of this section, a corporation formed on or  
34 after January first, two thousand one and before January first, two  
35 thousand three may elect to be subject to tax under this article or  
36 under article nine-A of this chapter for its first taxable year begin-  
37 ning on or after January first, two thousand one and before January  
38 first, two thousand three in which either (i) sixty-five percent or more  
39 of its voting stock is owned or controlled, directly or indirectly by a  
40 financial holding company, provided the corporation whose voting stock  
41 is so owned or controlled is principally engaged in activities that are  
42 described in section 4(k)(4) or 4(k)(5) of the federal bank holding  
43 company act of nineteen hundred fifty-six, as amended and the regu-  
44 lations promulgated pursuant to the authority of such section, or (ii)  
45 it is a financial subsidiary.

46 An election under this paragraph may not be made by a corporation  
47 described in paragraphs one through eight of subsection (a) of this  
48 section or in subsection (e) of this section. In addition, an election  
49 under this paragraph may not be made by a corporation that is a party to  
50 a reorganization, as defined in subsection (a) of section 368 of the  
51 internal revenue code of 1986, as amended, of a corporation described in  
52 paragraph one of this subsection if both corporations were sixty-five  
53 percent or more owned or controlled, directly or indirectly, by the same  
54 interests at the time of the reorganization. An election under this  
55 paragraph must be made by the taxpayer on or before the due date for  
56 filing its return (determined with regard to extensions of time for



1 filing) for the applicable taxable year. The election to be taxed under  
2 article nine-A of this chapter shall be made by the taxpayer by filing  
3 the report required pursuant to section two hundred eleven of this chap-  
4 ter and the election to be taxed under this article shall be made by the  
5 taxpayer by filing the return required pursuant to section fourteen  
6 hundred sixty-two of this article. Any election made pursuant to this  
7 paragraph shall be irrevocable and shall apply to each subsequent taxa-  
8 ble year beginning on or after January first, two thousand one and  
9 before January first, two thousand three, provided that the stock owner-  
10 ship requirements described in subparagraph (i) of this paragraph are  
11 met or such corporation described in subparagraph (ii) of this paragraph  
12 continues as a financial subsidiary.

13 (3) For purposes of this section, a financial subsidiary means a  
14 corporation (i) sixty-five percent or more of whose voting stock is  
15 owned or controlled, directly or indirectly by a banking corporation  
16 described in paragraph one, two or three of subsection (a) of this  
17 section and (ii) is described in section 5136A(g) of the revised stat-  
18 utes of the United States or section 46 of the federal deposit insurance  
19 act. For purposes of this article, the term "banking corporation" shall  
20 include a corporation electing to be taxed under this article pursuant  
21 to paragraph two of this subsection for so long as such election shall  
22 be in effect.

23 (j) Transitional provisions relating to the enactment and implementa-  
24 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
25 to the contrary contained in this section other than subsection (n) of  
26 this section, a corporation that was in existence before January first,  
27 two thousand three and was subject to tax under article nine-A of this  
28 chapter for its last taxable year beginning before January first, two  
29 thousand three, shall continue to be taxable under such article nine-A  
30 for all taxable years beginning on or after January first, two thousand  
31 three and before January first, two thousand four. The preceding  
32 sentence shall not apply to any taxable year during which such corpo-  
33 ration is a banking corporation described in paragraphs one through  
34 eight of subsection (a) of this section. Notwithstanding anything to the  
35 contrary contained in this section other than subsection (n) of this  
36 section, a banking corporation that was in existence before January  
37 first, two thousand three and was subject to tax under this article for  
38 its last taxable year beginning before January first, two thousand  
39 three, shall continue to be taxable under this article for all taxable  
40 years beginning on or after January first, two thousand three and before  
41 January first, two thousand four. Provided, however, that nothing in  
42 this subsection shall prohibit a corporation that elected pursuant to  
43 subsection (d) of this section to be taxable under article nine-A of  
44 this chapter from revoking that election in accordance with such  
45 subsection (d).

46 For purposes of this paragraph, a corporation shall be considered to  
47 be subject to tax under article nine-A of this chapter for a taxable  
48 year if such corporation was not a taxpayer but was properly included in  
49 a combined report filed pursuant to section two hundred eleven of this  
50 chapter for such taxable year and a corporation shall be considered to  
51 be subject to tax under this article for a taxable year if such corpo-  
52 ration was not a taxpayer but was properly included in a combined return  
53 filed pursuant to subsection (f) or (g) of section fourteen hundred  
54 sixty-two of this article for such taxable year. A corporation that was  
55 in existence before January first, two thousand three but first becomes  
56 a taxpayer in a taxable year beginning on or after January first, two

1 thousand three and before January first, two thousand four, shall be  
2 considered for purposes of this paragraph to have been subject to tax  
3 under article nine-A of this chapter for its last taxable year beginning  
4 before January first, two thousand three if such corporation would have  
5 been subject to tax under such article for such taxable year if it had  
6 been a taxpayer during such taxable year. A corporation that was in  
7 existence before January first, two thousand three but first becomes a  
8 taxpayer in a taxable year beginning on or after January first, two  
9 thousand three and before January first, two thousand four, shall be  
10 considered for purposes of this paragraph to have been subject to tax  
11 under this article for its last taxable year beginning before January  
12 first, two thousand three if such corporation would have been subject to  
13 tax under this article for such taxable year if it had been a taxpayer  
14 during such taxable year.

15 (2) Notwithstanding anything to the contrary contained in this section  
16 other than subsection (n) of this section, a corporation formed on or  
17 after January first, two thousand three and before January first, two  
18 thousand four may elect to be subject to tax under this article or under  
19 article nine-A of this chapter for its first taxable year beginning on  
20 or after January first, two thousand three and before January first, two  
21 thousand four in which either (i) sixty-five percent or more of its  
22 voting stock is owned or controlled, directly or indirectly by a finan-  
23 cial holding company, provided the corporation whose voting stock is so  
24 owned or controlled is principally engaged in activities that are  
25 described in section 4(k)(4) or 4(k)(5) of the federal bank holding  
26 company act of nineteen hundred fifty-six, as amended and the regu-  
27 lations promulgated pursuant to the authority of such section, or (ii)  
28 it is a financial subsidiary.

29 An election under this paragraph may not be made by a corporation  
30 described in paragraphs one through eight of subsection (a) of this  
31 section or in subsection (e) of this section. In addition, an election  
32 under this paragraph may not be made by a corporation that is a party to  
33 a reorganization, as defined in subsection (a) of section 368 of the  
34 internal revenue code of 1986, as amended, of a corporation described in  
35 paragraph one of this subsection if both corporations were sixty-five  
36 percent or more owned or controlled, directly or indirectly, by the same  
37 interests at the time of the reorganization. An election under this  
38 paragraph must be made by the taxpayer on or before the due date for  
39 filing its return (determined with regard to extensions of time for  
40 filing) for the applicable taxable year. The election to be taxed under  
41 article nine-A of this chapter shall be made by the taxpayer by filing  
42 the report required pursuant to section two hundred eleven of this chap-  
43 ter and the election to be taxed under this article shall be made by the  
44 taxpayer by filing the return required pursuant to section fourteen  
45 hundred sixty-two of this article. Any election made pursuant to this  
46 paragraph shall be irrevocable and shall apply to each subsequent tax-  
47 able year beginning on or after January first, two thousand three and  
48 before January first, two thousand four, provided that the stock owner-  
49 ship requirements described in subparagraph (i) of this paragraph are  
50 met or such corporation described in subparagraph (ii) of this paragraph  
51 continues as a financial subsidiary.

52 (3) For purposes of this section, a financial subsidiary means a  
53 corporation (i) sixty-five percent or more of whose voting stock is  
54 owned or controlled, directly or indirectly by a banking corporation  
55 described in paragraph one, two or three of subsection (a) of this  
56 section and (ii) is described in section 5136A(g) of the revised stat-

1 utes of the United States or section 46 of the federal deposit insurance  
2 act. For purposes of this article, the term "banking corporation" shall  
3 include a corporation electing to be taxed under this article pursuant  
4 to paragraph two of this subsection for so long as such election shall  
5 be in effect.

6 (k) Transitional provisions relating to the enactment and implementa-  
7 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
8 to the contrary contained in this section other than subsection (n) of  
9 this section, a corporation that was in existence before January first,  
10 two thousand four and was subject to tax under article nine-A of this  
11 chapter for its last taxable year beginning before January first, two  
12 thousand four, shall continue to be taxable under such article nine-A  
13 for all taxable years beginning on or after January first, two thousand  
14 four and before January first, two thousand six. The preceding sentence  
15 shall not apply to any taxable year during which such corporation is a  
16 banking corporation described in paragraphs one through eight of  
17 subsection (a) of this section. Notwithstanding anything to the contrary  
18 contained in this section other than subsection (n) of this section, a  
19 banking corporation that was in existence before January first, two  
20 thousand four and was subject to tax under this article for its last  
21 taxable year beginning before January first, two thousand four, shall  
22 continue to be taxable under this article for all taxable years begin-  
23 ning on or after January first, two thousand four and before January  
24 first, two thousand six. Provided, however, that nothing in this  
25 subsection shall prohibit a corporation that elected pursuant to  
26 subsection (d) of this section to be taxable under article nine-A of  
27 this chapter from revoking that election in accordance with such  
28 subsection (d).

29 For purposes of this paragraph, a corporation shall be considered to  
30 be subject to tax under article nine-A of this chapter for a taxable  
31 year if such corporation was not a taxpayer but was properly included in  
32 a combined report filed pursuant to section two hundred eleven of this  
33 chapter for such taxable year and a corporation shall be considered to  
34 be subject to tax under this article for a taxable year if such corpo-  
35 ration was not a taxpayer but was properly included in a combined return  
36 filed pursuant to subsection (f) or (g) of section fourteen hundred  
37 sixty-two of this article for such taxable year. A corporation that was  
38 in existence before January first, two thousand four but first becomes a  
39 taxpayer in a taxable year beginning on or after January first, two  
40 thousand four and before January first, two thousand six, shall be  
41 considered for purposes of this paragraph to have been subject to tax  
42 under article nine-A of this chapter for its last taxable year beginning  
43 before January first, two thousand four, if such corporation would have  
44 been subject to tax under such article for such taxable year if it had  
45 been a taxpayer during such taxable year. A corporation that was in  
46 existence before January first, two thousand four, but first becomes a  
47 taxpayer in a taxable year beginning on or after January first, two  
48 thousand four and before January first, two thousand six, shall be  
49 considered for purposes of this paragraph to have been subject to tax  
50 under this article for its last taxable year beginning before January  
51 first, two thousand four if such corporation would have been subject to  
52 tax under this article for such taxable year if it had been a taxpayer  
53 during such taxable year.

54 (2) Notwithstanding anything to the contrary contained in this section  
55 other than subsection (n) of this section, a corporation formed on or  
56 after January first, two thousand four and before January first, two

1 thousand six may elect to be subject to tax under this article or under  
2 article nine-A of this chapter for its first taxable year beginning on  
3 or after January first, two thousand four and before January first, two  
4 thousand six in which either (i) sixty-five percent or more of its  
5 voting stock is owned or controlled, directly or indirectly by a finan-  
6 cial holding company, provided the corporation whose voting stock is so  
7 owned or controlled is principally engaged in activities that are  
8 described in section 4(k)(4) or 4(k)(5) of the federal bank holding  
9 company act of nineteen hundred fifty-six, as amended and the regu-  
10 lations promulgated pursuant to the authority of such section, or (ii)  
11 it is a financial subsidiary.

12 An election under this paragraph may not be made by a corporation  
13 described in paragraphs one through eight of subsection (a) of this  
14 section or in subsection (e) of this section. In addition, an election  
15 under this paragraph may not be made by a corporation that is a party to  
16 a reorganization, as defined in subsection (a) of section three hundred  
17 sixty-eight of the internal revenue code of nineteen eighty-six, as  
18 amended, of a corporation described in paragraph one of this subsection  
19 if both corporations were sixty-five percent or more owned or  
20 controlled, directly or indirectly, by the same interests at the time of  
21 the reorganization. An election under this paragraph must be made by the  
22 taxpayer on or before the due date for filing its return (determined  
23 with regard to extensions of time for filing) for the applicable taxable  
24 year. The election to be taxed under article nine-A of this chapter  
25 shall be made by the taxpayer by filing the report required pursuant to  
26 section two hundred eleven of this chapter and the election to be taxed  
27 under this article shall be made by the taxpayer by filing the return  
28 required pursuant to section fourteen hundred sixty-two of this article.  
29 Any election made pursuant to this paragraph shall be irrevocable and  
30 shall apply to each subsequent taxable year beginning on or after Janu-  
31 ary first, two thousand four and before January first, two thousand six,  
32 provided that the stock ownership requirements described in subparagraph  
33 (i) of this paragraph are met or such corporation described in subpara-  
34 graph (ii) of this paragraph continues as a financial subsidiary.

35 (3) For purposes of this section, a financial subsidiary means a  
36 corporation (i) sixty-five percent or more of whose voting stock is  
37 owned or controlled, directly or indirectly by a banking corporation  
38 described in paragraph one, two or three of subsection (a) of this  
39 section and (ii) is described in section 5136A(q) of the revised stat-  
40 utes of the United States or section forty-six of the federal deposit  
41 insurance act. For purposes of this article, the term "banking corpo-  
42 ration" shall include a corporation electing to be taxed under this  
43 article pursuant to paragraph two of this subsection for so long as such  
44 election shall be in effect.

45 (1) Transitional provisions relating to the enactment and implementa-  
46 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
47 to the contrary contained in this section other than subsection (n) of  
48 this section, a corporation that was in existence before January first,  
49 two thousand six and was subject to tax under article nine-A of this  
50 chapter for its last taxable year beginning before January first, two  
51 thousand six, shall continue to be taxable under article nine-A for all  
52 taxable years beginning on or after January first, two thousand six and  
53 before January first, two thousand eight. The preceding sentence shall  
54 not apply to any taxable year during which such corporation is a banking  
55 corporation described in paragraphs one through eight of subsection (a)  
56 of this section. Notwithstanding anything to the contrary contained in



1 this section other than subsection (n) of this section, a banking corpo-  
2 ration that was in existence before January first, two thousand six and  
3 was subject to tax under this article for its last taxable year begin-  
4 ning before January first, two thousand six, shall continue to be taxa-  
5 ble under this article for all taxable years beginning on or after Janu-  
6 ary first, two thousand six and before January first, two thousand  
7 eight. Provided, however, that nothing in this subsection shall prohibit  
8 a corporation that elected pursuant to subsection (d) of this section to  
9 be taxable under article nine-A of this chapter from revoking that  
10 election in accordance with such subsection (d).

11 For purposes of this paragraph, a corporation shall be considered to  
12 be subject to tax under article nine-A of this chapter for a taxable  
13 year if such corporation was not a taxpayer but was properly included in  
14 a combined report filed pursuant to section two hundred eleven of this  
15 chapter for such taxable year and a corporation shall be considered to  
16 be subject to tax under this article for a taxable year if such corpo-  
17 ration was not a taxpayer but was properly included in a combined return  
18 filed pursuant to subsection (f) or (g) of section fourteen hundred  
19 sixty-two of this article for such taxable year. A corporation that was  
20 in existence before January first, two thousand six but first becomes a  
21 taxpayer in a taxable year beginning on or after January first, two  
22 thousand six and before January first, two thousand eight, shall be  
23 considered for purposes of this paragraph to have been subject to tax  
24 under article nine-A of this chapter for its last taxable year beginning  
25 before January first, two thousand six if such corporation would have  
26 been subject to tax under such article for such taxable year if it had  
27 been a taxpayer during such taxable year. A corporation that was in  
28 existence before January first, two thousand six but first becomes a  
29 taxpayer in a taxable year beginning on or after January first, two  
30 thousand six and before January first, two thousand eight, shall be  
31 considered for purposes of this paragraph to have been subject to tax  
32 under this article for its last taxable year beginning before January  
33 first, two thousand six if such corporation would have been subject to  
34 tax under this article for such taxable year if it had been a taxpayer  
35 during such taxable year.

36 (2) Notwithstanding anything to the contrary contained in this section  
37 other than subsection (n) of this section, a corporation formed on or  
38 after January first, two thousand six and before January first, two  
39 thousand eight may elect to be subject to tax under this article or  
40 under article nine-A of this chapter for its first taxable year begin-  
41 ning on or after January first, two thousand six and before January  
42 first, two thousand eight in which either (i) sixty-five percent or more  
43 of its voting stock is owned or controlled, directly or indirectly by a  
44 financial holding company, provided the corporation whose voting stock  
45 is so owned or controlled is principally engaged in activities that are  
46 described in section 4(k)(4) or 4(k)(5) of the federal bank holding  
47 company act of nineteen hundred fifty-six, as amended and the regu-  
48 lations promulgated pursuant to the authority of such section, or (ii)  
49 it is a financial subsidiary. An election under this paragraph may not  
50 be made by a corporation described in paragraphs one through eight of  
51 subsection (a) of this section or in subsection (e) of this section. In  
52 addition, an election under this paragraph may not be made by a corpo-  
53 ration that is a party to a reorganization, as defined in subsection (a)  
54 of section 368 of the internal revenue code of 1986, as amended, of a  
55 corporation described in paragraph one of this subsection if both corpo-



1 rations were sixty-five percent or more owned or controlled, directly or  
2 indirectly, by the same interests at the time of the reorganization.

3 An election under this paragraph must be made by the taxpayer on or  
4 before the due date for filing its return (determined with regard to  
5 extensions of time for filing) for the applicable taxable year. The  
6 election to be taxed under article nine-A of this chapter shall be made  
7 by the taxpayer by filing the report required pursuant to section two  
8 hundred eleven of this chapter and the election to be taxed under this  
9 article shall be made by the taxpayer by filing the return required  
10 pursuant to section fourteen hundred sixty-two of this article. Any  
11 election made pursuant to this paragraph shall be irrevocable and shall  
12 apply to each subsequent taxable year beginning on or after January  
13 first, two thousand six and before January first, two thousand eight,  
14 provided that the stock ownership requirements described in subparagraph  
15 (i) of this paragraph are met or such corporation described in subpara-  
16 graph (ii) of this paragraph continues as a financial subsidiary.

17 (3) For purposes of this section, a financial subsidiary means a  
18 corporation (i) sixty-five percent or more of whose voting stock is  
19 owned or controlled, directly or indirectly by a banking corporation  
20 described in paragraph one, two or three of subsection (a) of this  
21 section and (ii) is described in section 5136A(g) of the revised stat-  
22 utes of the United States or section 46 of the federal deposit insurance  
23 act. For purposes of this article, the term "banking corporation" shall  
24 include a corporation electing to be taxed under this article pursuant  
25 to paragraph two of this subsection for so long as such election shall  
26 be in effect.

27 (m) Transitional provisions relating to the enactment and implementa-  
28 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding  
29 anything to the contrary contained in this section other than subsection  
30 (n) of this section, a corporation that was in existence before January  
31 first, two thousand twelve and was subject to tax under article nine-A  
32 of this chapter for its last taxable year beginning before January  
33 first, two thousand twelve, shall continue to be taxable under such  
34 article for all taxable years beginning on or after January first, two  
35 thousand twelve and before January first, two thousand twenty-three. The  
36 preceding sentence shall not apply to any taxable year during which such  
37 corporation is a banking corporation described in paragraphs one through  
38 eight of subsection (a) of this section. Notwithstanding anything to  
39 the contrary contained in this section other than subsection (n) of this  
40 section, a banking corporation or corporation that was in existence  
41 before January first, two thousand twelve and was subject to tax under  
42 this article for its last taxable year beginning before January first,  
43 two thousand twelve, shall continue to be taxable under this article for  
44 all taxable years beginning on or after January first, two thousand  
45 twelve and before January first, two thousand twenty-three only if the  
46 corporation is a banking corporation as defined in subsection (a) of  
47 this section or the corporation satisfies the requirements for a corpo-  
48 ration to elect to be taxable under this article. Provided further, that  
49 nothing in this subsection shall prohibit a corporation that elected  
50 pursuant to subsection (d) of this section to be taxable under article  
51 nine-A of this chapter from revoking that election in accordance with  
52 such subsection (d).

53 For purposes of this paragraph, a corporation shall be considered to  
54 be subject to tax under article nine-A of this chapter for a taxable  
55 year if such corporation was not a taxpayer but was properly included in  
56 a combined report filed pursuant to section two hundred eleven of this

chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand twelve but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand twelve and before January first, two thousand twenty-three, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand twelve if such corporation would have been subject to tax under such article 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 twelve but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand twelve and before January first, two thousand twenty-three, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand twelve if such corporation would have been subject to tax under this article 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 subsection (n) of this section, a corporation formed on or after January first, two thousand twelve and before January first, two thousand twenty-three may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand twelve and before January first, two thousand twenty-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 section 4(k)(4) or 4(k)(5) 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 subsection (a) of this section or in subsection (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 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection 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 article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. 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 twelve and before January first, two thousand twenty-three, provided that the stock ownership and activities requirements

1 described in subparagraph (i) of this paragraph are met or such corpo-  
2 ration described in subparagraph (ii) of this paragraph continues as a  
3 financial subsidiary.

4 (3) For purposes of this section, a financial subsidiary means a  
5 corporation (i) sixty-five percent or more of whose voting stock is  
6 owned or controlled, directly or indirectly by a banking corporation  
7 described in paragraph one, two or three of subsection (a) of this  
8 section and (ii) is described in section 5136A(g) of the revised stat-  
9 utes of the United States or section 46 of the federal deposit insurance  
10 act. For purposes of this article, the term "banking corporation" shall  
11 include a corporation electing to be taxed under this article pursuant  
12 to paragraph two of this subsection for so long as such election shall  
13 be in effect.

14 (4) The provisions of this subsection shall not apply to a captive  
15 REIT, a captive RIC or an overcapitalized captive insurance company.

16 (n)(1) Notwithstanding anything in this article to the contrary, if  
17 any of the conditions described in paragraph three of this subsection  
18 apply to a corporation that has made either the election to be taxable  
19 under article nine-A of this chapter pursuant to the Gramm-Leach-Bliley  
20 transitional provisions in this section, or the election pursuant to  
21 subsection (d) of this section to continue to be taxable under article  
22 nine-A of this chapter (hereinafter the "electing corporation"), then  
23 such corporation shall be deemed to have revoked the election as of the  
24 first day of the taxable year in which such condition applied.

25 (2) Notwithstanding anything in this article to the contrary, if any  
26 of the conditions described in paragraph three of this subsection apply  
27 to a corporation required to be taxable under article nine-A of this  
28 chapter pursuant to the Gramm-Leach-Bliley transitional provisions in  
29 this section (hereinafter the "grandfathered corporation"), such corpo-  
30 ration, if it is otherwise described in subsection (a) of this section,  
31 shall be taxable under this article as of the first day of the taxable  
32 year in which such condition applied.

33 (3) The provisions of paragraph one and paragraph two of this  
34 subsection shall apply if any of the following conditions exist or occur  
35 with respect to the electing corporation or the grandfathered corpo-  
36 ration in a taxable year (including any short taxable year) beginning on  
37 or after January first, two thousand seven:

38 (A) the corporation ceases to be a taxpayer under article nine-A of  
39 this chapter;

40 (B) the corporation becomes subject to the fixed dollar minimum tax  
41 under paragraph (d) of subdivision one of section two hundred ten of  
42 this chapter;

43 (C) the corporation has no wages or receipts allocable to New York  
44 state pursuant to subdivision three of section two hundred ten of this  
45 chapter, or is otherwise inactive; provided that this subparagraph shall  
46 not apply to a corporation which is engaged in the active conduct of a  
47 trade or business, or substantially all of the assets of which are stock  
48 and securities of corporations which are directly or indirectly  
49 controlled by it and are engaged in the active conduct of a trade or  
50 business;

51 (D) sixty-five percent or more of the voting stock of the corporation  
52 becomes owned or controlled directly by a corporation that acquired the  
53 stock in a transaction (or series of related transactions) that quali-  
54 fies as a purchase within the meaning of paragraph three of subsection  
55 (h) of section three hundred thirty-eight of the internal revenue code  
56 unless the corporation whose stock was acquired and the corporation

1 acquiring the stock were, immediately prior to such purchase, members of  
2 the same affiliated group (as such term is defined in section fifteen  
3 hundred four of the internal revenue code without regard to the exclu-  
4 sions provided for in subsection (b) of such section); provided that any  
5 acquisition that was completed on or before January third, two thousand  
6 seven shall be treated for purposes of this subparagraph as an acquisi-  
7 tion made before January first, two thousand seven; or

8 (E) the corporation, in a transaction or series of related trans-  
9 actions, acquires assets, whether by contribution, purchase, or other-  
10 wise, having an average value (determined in accordance with subdivision  
11 two of section two hundred ten of this chapter), or, if greater, a total  
12 tax basis, in excess of forty percent of the average value, or, if  
13 greater, the total tax basis, of all the assets of the corporation imme-  
14 diately prior to such acquisition and as a result of such acquisition  
15 the corporation is principally engaged in a business that is different  
16 from the business immediately prior to such acquisition, provided that  
17 such different business is described in subparagraph (i), (ii) or (iii)  
18 of paragraph nine of subsection (a) of this section.

19 § 1453. Computations of entire net income. (a) Entire net income means  
20 total net income from all sources which shall be the same as the entire  
21 taxable income (but not alternative minimum taxable income).

22 (1) which the taxpayer is required to report to the United States  
23 treasury department, or

24 (2) which the taxpayer, in the case of a corporation which is exempt  
25 from federal income tax (other than the tax on unrelated business taxa-  
26 ble income imposed under section 511 of the internal revenue code) but  
27 is subject to tax under this article, would have been required to report  
28 to the United States treasury department but for such exemption, or

29 (3) which, in the case of a corporation organized under the laws of a  
30 country other than the United States, is effectively connected with the  
31 conduct of a trade or business within the United States as determined  
32 under section 882 of the internal revenue code subject to the modifica-  
33 tions and adjustments hereinafter provided, or

34 (4) which the taxpayer would have been required to report to the  
35 United States treasury department if it had not made the election under  
36 subchapter s of chapter one of the internal revenue code.

37 (b) Entire net income shall be computed without the deduction or  
38 exclusion of:

39 (1) (A) in the case of a corporation organized under the laws of a  
40 country other than the United States, (i) any part of any income from  
41 dividends or interest on any kind of stock, securities or indebtedness,  
42 but only if such income is treated as effectively connected with the  
43 conduct of a trade or business in the United States pursuant to section  
44 eight hundred sixty-four of the internal revenue code, (ii) any income  
45 exempt from federal taxable income under any treaty obligation of the  
46 United States, but only if such income would be treated as effectively  
47 connected in absence of such exemption, provided that such treaty obli-  
48 gation does not preclude the taxation of such income by a state, or  
49 (iii) any income which would be treated as effectively connected if such  
50 income were not excluded from gross income pursuant to subsection (a) of  
51 section one hundred three of the internal revenue code; (B) in the case  
52 of any other corporation, any part of any income from dividends or  
53 interest on any kind of stock, securities or indebtedness; (C) except  
54 that for purposes of subparagraphs (A) and (B) of this paragraph there  
55 shall be excluded any amounts treated as dividends pursuant to section

1 seventy-eight of the internal revenue code and any amounts described in  
2 paragraphs eleven and twelve of subsection (e) of this section;

3 (2) taxes on or measured by income or profits paid or accrued within  
4 the taxable year to the United States, or any of its possessions or to  
5 any foreign country;

6 (3) premiums paid for environmental remediation insurance, as defined  
7 in section twenty-three of this chapter, and deducted in determining  
8 federal taxable income, to the extent of the amount of the environmental  
9 remediation insurance credit allowed under such section twenty-three and  
10 subsection (s) of section fourteen hundred fifty-six of this article;

11 (4) taxes imposed under this article, sections one hundred eighty-  
12 three and one hundred eighty-four and article nine-A of this chapter;

13 (5) in those instances where a credit for the special additional mort-  
14 gage recording tax is allowed under paragraph one of subsection (c) of  
15 section fourteen hundred fifty-six of this article, the amount allowed  
16 as an exclusion or deduction for the special additional mortgage record-  
17 ing tax imposed by subdivision one-a of section two hundred fifty-three  
18 of this chapter in determining the entire taxable income which the  
19 taxpayer is required to report to the United States treasury department  
20 for such taxable year; and

21 (6) Unless the credit allowed pursuant to subsection (c) of section  
22 fourteen hundred fifty-six of this article is reflected in the computa-  
23 tion of the gain or loss so as to result in an increase in such gain or  
24 decrease of such loss, for federal income tax purposes, from the sale or  
25 other disposition of the property with respect to which the special  
26 additional mortgage recording tax imposed pursuant to subdivision one-a  
27 of section two hundred fifty-three of this chapter was paid, the amount  
28 of the special additional mortgage recording tax imposed by subdivision  
29 one-a of section two hundred fifty-three of this chapter which was paid  
30 and which is reflected in the computation of the basis of the property  
31 so as to result in a decrease in such gain or increase in such loss for  
32 federal income tax purposes from the sale or other disposition of the  
33 property with respect to which such tax was paid.

34 (7) for taxable years beginning after December thirty-first, nineteen  
35 hundred eighty-one, except with respect to property which is a qualified  
36 mass commuting vehicle described in subparagraph (D) of paragraph eight  
37 of subsection (f) of section one hundred sixty-eight of the internal  
38 revenue code (relating to qualified mass commuting vehicles), any amount  
39 which the taxpayer claimed as a deduction in computing its federal taxa-  
40 ble income solely as a result of an election made pursuant to the  
41 provisions of such paragraph eight as it was in effect for agreements  
42 entered into prior to January first, nineteen hundred eighty-four;

43 (8) for taxable years beginning after December thirty-first, nineteen  
44 hundred eighty-one, except with respect to property which is a qualified  
45 mass commuting vehicle described in subparagraph (D) of paragraph eight  
46 of subsection (f) of section one hundred sixty-eight of the internal  
47 revenue code (relating to qualified mass commuting vehicles), any amount  
48 which the taxpayer would have been required to include in the computa-  
49 tion of its federal taxable income had it not made the election permit-  
50 ted pursuant to such paragraph eight as it was in effect for agreements  
51 entered into prior to January first, nineteen hundred eighty-four;

52 (9) in the case of property placed in service in taxable years begin-  
53 ning before nineteen hundred ninety-four, for taxable years beginning  
54 after December thirty-first, nineteen hundred eighty-one, except with  
55 respect to property subject to the provisions of section two hundred  
56 eighty-F of the internal revenue code and property subject to the



1 provisions of section one hundred sixty-eight of the internal revenue  
2 code which is placed in service in this state in taxable years beginning  
3 after December thirty-first, nineteen hundred eighty-four, the amount  
4 allowable as a deduction determined under section one hundred sixty-  
5 eight of the internal revenue code;

6 (10) upon the disposition of property to which paragraph seven of  
7 subsection (e) of this section applies, the amount, if any, by which the  
8 aggregate of the amounts described in such paragraph seven attributable  
9 to such property exceeds the aggregate of the amounts described in para-  
10 graph nine of this subsection attributable to such property,

11 (11) for taxable years beginning before January first, two thousand  
12 ten, in the case of a taxpayer subject to the provisions of section  
13 585(c) of the internal revenue code, the amount allowed as a deduction  
14 pursuant to section 166 of such code, and

15 (12) for taxable years beginning before January first, two thousand  
16 ten, for taxpayers subject to the provisions of subsection (i) of this  
17 section, twenty percent of the excess of (A) the amount determined  
18 pursuant to such subsection (i) over (B) the amount which would have  
19 been allowable had such institution maintained its bad debt reserve for  
20 all taxable years on the basis of actual experience.

21 (13) for taxable years beginning after December thirty-first, two  
22 thousand two, in the case of qualified property described in paragraph  
23 two of subsection k of section 168 of the internal revenue code, other  
24 than qualified resurgence zone property described in subsection (u) of  
25 this section, and other than qualified New York Liberty Zone property  
26 described in paragraph two of subsection b of section 1400L of the  
27 internal revenue code (without regard to clause (i) of subparagraph (C)  
28 of such paragraph), which was placed in service on or after June first,  
29 two thousand three, the amount allowable as a deduction under section  
30 167 of the internal revenue code.

31 (14) The amount of any deduction allowed pursuant to section one  
32 hundred ninety-nine of the internal revenue code.

33 (15) The amount of any federal deduction for taxes imposed under arti-  
34 cle twenty-three of this chapter.

35 (c) (1) Except as otherwise provided in paragraphs two, three and four  
36 of this subsection, in the case of the sale or exchange of property by a  
37 taxpayer which has been subject to article nine-B or nine-C of this  
38 chapter (as such articles were in effect on or before December thirty-  
39 first, nineteen hundred seventy-two) where the property has a higher  
40 adjusted basis for New York tax purposes than for federal tax purposes,  
41 there shall be allowed as a deduction from entire net income, the  
42 portion of any gain or loss on such sale which equals the difference in  
43 such basis.

44 (2) In case of property of a taxpayer, other than a savings bank or a  
45 savings and loan association, acquired prior to January first, nineteen  
46 hundred twenty-six, and disposed of thereafter, the computation of  
47 entire net income shall be modified as follows:

48 (i) no gain shall be deemed to have been derived if either the cost or  
49 the fair market price or value on January first, nineteen hundred twen-  
50 ty-six, exceeds the value realized;

51 (ii) no loss shall be deemed to have been sustained if either the cost  
52 or the fair market price or value on January first, nineteen hundred  
53 twenty-six, is less than the value realized;

54 (iii) where both the cost and the fair market price or value on Janu-  
55 ary first, nineteen hundred twenty-six, are less than the value real-

1 ized, the basis for computing gain shall be the cost or the fair market  
2 price or value on such date, whichever is higher;

3 (iv) where both the cost and the fair market price or value on January  
4 first, nineteen hundred twenty-six, are in excess of the value realized,  
5 the basis for computing loss shall be the cost or the fair market price  
6 or value on such date, whichever is lower.

7 (3) In case of property of a savings bank acquired prior to January  
8 first, nineteen hundred forty-four, and disposed of thereafter, in  
9 computing entire net income the basis of such property shall be the  
10 value as of December thirty-first, nineteen hundred forty-three, as set  
11 forth in such bank's report of surplus and undivided earnings filed with  
12 the tax commission as of that date.

13 (4) In case of property of a savings and loan association, acquired  
14 prior to January first, nineteen hundred fifty-three, and disposed of  
15 thereafter, the computation of entire net income shall be modified as  
16 follows:

17 (i) no gain shall be deemed to have been derived if either the cost or  
18 the fair market price or value on January first, nineteen hundred  
19 fifty-three, exceeds the value realized;

20 (ii) no loss shall be deemed to have been sustained if either the cost  
21 or the fair market price or value on January first, nineteen hundred  
22 fifty-three, is less than the value realized;

23 (iii) where both the cost and the fair market price or value on Janu-  
24 ary first, nineteen hundred fifty-three, are less than the value real-  
25 ized, the basis for computing gain shall be the cost or the fair market  
26 price or value on such date, whichever is higher;

27 (iv) where both the cost and the fair market price or value on January  
28 first, nineteen hundred fifty-three, are in excess of the value real-  
29 ized, the basis for computing loss shall be the cost or the fair market  
30 price or value on such date, whichever is lower.

31 (d) Entire net income shall not include any refund or credit of a tax  
32 for which no exclusion or deduction was allowed in determining the  
33 taxpayer's entire net income under this article or articles nine-A or  
34 twenty-three of this chapter for any prior year.

35 (e) There shall be allowed as a deduction in determining entire net  
36 income, to the extent not deductible in determining federal taxable  
37 income:

38 (1) interest on indebtedness incurred or continued to purchase or  
39 carry obligations or securities the income from which is subject to tax  
40 under this article but exempt from federal income tax,

41 (2) ordinary and necessary expenses paid or incurred during the taxa-  
42 ble year attributable to income which is subject to tax under this arti-  
43 cle but exempt from federal income tax,

44 (3) the amortizable bond premium for the taxable year on any bond the  
45 interest on which is subject to tax under this article but exempt from  
46 federal income tax,

47 (4) that portion of wages or salaries paid or incurred for the taxable  
48 year for which a deduction is not allowed pursuant to the provisions of  
49 section two hundred eighty-C of the internal revenue code,

50 (5) for taxable years beginning after December thirty-first, nineteen  
51 hundred eighty-one, except with respect to property which is a qualified  
52 mass commuting vehicle described in subparagraph (D) of paragraph eight  
53 of subsection (f) of section one hundred sixty-eight of the internal  
54 revenue code (relating to qualified mass commuting vehicles), any amount  
55 which is included in the taxpayer's federal taxable income solely as a  
56 result of an election made pursuant to the provisions of such paragraph

1 eight as it was in effect for agreements entered into prior to January  
2 first, nineteen hundred eighty-four,

3 (6) for taxable years beginning after December thirty-first, nineteen  
4 hundred eighty-one, except with respect to property which is a qualified  
5 mass commuting vehicle described in subparagraph (D) of paragraph eight  
6 of subsection (f) of section one hundred sixty-eight of the internal  
7 revenue code (relating to qualified mass commuting vehicles), any amount  
8 which the taxpayer could have excluded from federal taxable income had  
9 it not made the election provided for in such paragraph eight as it was  
10 in effect for agreements entered into prior to January first, nineteen  
11 hundred eighty-four,

12 (7) in the case of property placed in service in taxable years begin-  
13 ning before nineteen hundred ninety-four, for taxable years beginning  
14 after December thirty-first, nineteen hundred eighty-one, except with  
15 respect to property subject to the provisions of section two hundred  
16 eighty-F of the internal revenue code and property subject to the  
17 provisions of section one hundred sixty-eight of the internal revenue  
18 code which is placed in service in this state in taxable years beginning  
19 after December thirty-first, nineteen hundred eighty-four, and provided  
20 a deduction has not been excluded from entire net income pursuant to  
21 paragraph seven of subsection (b) of this section, an amount with  
22 respect to property which is subject to the provisions of section one  
23 hundred sixty-eight of the internal revenue code equal to the amount  
24 allowable as the depreciation deduction under section one hundred  
25 sixty-seven of the internal revenue code as such section would have  
26 applied to property placed in service on December thirty-first, nineteen  
27 hundred eighty,

28 (8) upon the disposition of property to which paragraph seven of this  
29 subsection applies, the amount, if any, by which the aggregate of the  
30 amounts described in paragraph nine of subsection (b) of this section  
31 attributable to such property exceeds the aggregate of the amounts  
32 described in paragraph seven of this subsection attributable to such  
33 property,

34 (9) any amount of money or other property received from the federal  
35 deposit insurance corporation pursuant to subsection (c) of section  
36 thirteen of the federal deposit insurance act, as amended, regardless of  
37 whether any note or other instrument is issued in exchange therefor,

38 (10) any amount of money or other property received from the federal  
39 savings and loan insurance corporation pursuant to paragraph one, two,  
40 three or four of subsection (f) of section four hundred six of the  
41 federal national housing act, as amended, regardless of whether any note  
42 or other instrument is issued in exchange therefor,

43 (11) (i) seventeen percent of interest income from subsidiary capital,  
44 and

45 (ii) sixty percent of dividend income from subsidiary capital except  
46 as provided in paragraph eighteen of this subsection, and

47 (iii) sixty percent of the amount by which gains from subsidiary capi-  
48 tal exceed losses from subsidiary capital, to the extent such gains and  
49 losses were taken into account in determining the entire taxable income  
50 referred to in subsection (a) of this section,

51 (12) twenty-two and one-half percent of interest income on obligations  
52 of New York state, or of any political subdivision thereof, or of the  
53 United States, other than obligations held for resale in connection with  
54 regular trading activities,

55 (13) for taxable years beginning before January first, two thousand  
56 ten, in the case of a taxpayer which recaptures its balance of the

1 reserve for losses on loans for federal income tax purposes pursuant to  
2 section 585(c) of the internal revenue code, any amount which is  
3 included in federal taxable income pursuant to section 585(c) of such  
4 code,

5 (14) for taxable years beginning before January first, two thousand  
6 ten, in the case of a taxpayer subject to the provisions of section  
7 585(c) of the internal revenue code, any amount which is included in  
8 federal taxable income as a result of a recovery of a loan.

9 (15) for taxable years beginning before January first, two thousand  
10 ten, in the case of a taxpayer which is currently or has previously been  
11 subject to subsection (h) of this section, any amount which is included  
12 in federal taxable income pursuant to section 593(e)(2) of the internal  
13 revenue code, and any other amount so included as a result of a recovery  
14 of or termination from the use of a bad debt reserve as defined in  
15 section 593 of such code as in existence on December thirty-first, nine-  
16 teen hundred ninety-five as a result of federal legislation enacted  
17 after December thirty-first, nineteen hundred ninety-five.

18 (16) the amount deductible pursuant to subsection (p) of this section.

19 (17) one hundred percent of dividend income from subsidiary capital  
20 received during the taxable year if that dividend income is directly  
21 attributable to a dividend from a captive REIT or captive RIC for which  
22 the captive REIT or captive RIC claimed a federal dividends paid  
23 deduction and that captive REIT or captive RIC is included in a combined  
24 report or return under article nine-A, this article or article thirty-  
25 three of this chapter.

26 (f) Provided the taxpayer has not made an election pursuant to para-  
27 graph two of subsection (b) of section fourteen hundred fifty-four of  
28 this article, there shall be allowed as a deduction in determining  
29 entire net income, to the extent not deductible in determining federal  
30 taxable income, the adjusted eligible net income of an international  
31 banking facility determined as follows:

32 (1) The eligible net income of an international banking facility shall  
33 be the amount remaining after subtracting from the eligible gross income  
34 the applicable expenses.

35 (2) Eligible gross income shall be the gross income derived by an  
36 international banking facility from:

37 (A) making, arranging for, placing or servicing loans to foreign  
38 persons, provided, however, that in the case of a foreign person which  
39 is an individual, or which is a foreign branch of a domestic corporation  
40 (other than a bank), or which is a foreign corporation or foreign part-  
41 nership which is eighty per centum or more owned or controlled, either  
42 directly or indirectly, by one or more domestic corporations (other than  
43 banks), domestic partnerships or resident individuals, substantially all  
44 the proceeds of the loan are for use outside of the United States;

45 (B) making or placing deposits with foreign persons which are banks or  
46 foreign branches of banks (including foreign subsidiaries or foreign  
47 branches of the taxpayer) or with other international banking facili-  
48 ties; or

49 (C) entering into foreign exchange trading or hedging transactions  
50 related to any of the transactions described in this paragraph.

51 (3) Applicable expenses shall be any expenses or other deductions  
52 attributable, directly or indirectly, to the eligible gross income  
53 described in paragraph two of this subsection.

54 (4) Adjusted eligible net income shall be determined by subtracting  
55 from eligible net income the ineligible funding amount, and by subtract-  
56 ing 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, the amount of such loss shall be added to entire net income.

(8) For the purposes of this subsection 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.



1 (g) Entire net income shall be computed without regard to the  
2 reduction in the basis of property that is required by section three  
3 hundred sixty-two of the internal revenue code, because of any amount of  
4 money or other property received from the federal deposit insurance  
5 corporation pursuant to subsection (c) of section thirteen of the feder-  
6 al deposit insurance act, as amended, or from the federal savings and  
7 loan insurance corporation pursuant to paragraph one, two, three or four  
8 of subsection (f) of section four hundred six of the federal national  
9 housing act, as amended.

10 (h) (1) For purposes of this subsection, a "thrift institution" is a  
11 banking corporation which satisfies the requirements of subparagraphs  
12 (A) and (B) of this paragraph.

13 (A) Such banking corporation must be (i) a banking corporation as  
14 defined in paragraph one of subsection (a) of section fourteen hundred  
15 fifty-two of this article created or authorized to do business under  
16 article six or ten of the banking law, (ii) a banking corporation as  
17 defined in paragraph two or seven of subsection (a) of section fourteen  
18 hundred fifty-two of this article which is doing a business substantial-  
19 ly similar to the business which a corporation or association may be  
20 created to do under article six or ten of the banking law or any busi-  
21 ness which a corporation or association is authorized by such article to  
22 do, or (iii) a banking corporation as defined in paragraph four or five  
23 of subsection (a) of section fourteen hundred fifty-two of this article.

24 (B) At least sixty percent of the amount of the total assets (at the  
25 close of the taxable year) of such banking corporation must consist of  
26 (i) cash; (ii) obligations of the United States or of a state or poli-  
27 tical subdivision thereof, and stock or obligations of a corporation  
28 which is an instrumentality of the United States or of a state or poli-  
29 tical subdivision thereof, but not including obligations the interest on  
30 which is excludable from gross income under section 103 of the internal  
31 revenue code; (iii) loans secured by a deposit or share of a member;  
32 (iv) loans secured by an interest in real property which is (or from the  
33 proceeds of the loan, will become) residential real property or real  
34 property used primarily for church purposes, loans made for the improve-  
35 ment of residential real property or real property used primarily for  
36 church purposes, provided that for purposes of this clause, residential  
37 real property shall include single or multifamily dwellings, facilities  
38 in residential developments dedicated to public use or property used on  
39 a nonprofit basis for residents, and mobile homes not used on a tran-  
40 sient basis; (v) property acquired through the liquidation of defaulted  
41 loans described in clause (iv) of this subparagraph; (vi) any regular or  
42 residual interest in a REMIC, as such term is defined in section 860D of  
43 the internal revenue code and any regular interest in a FASIT, as such  
44 term is defined in section 860L of the internal revenue code, but only  
45 in the proportion which the assets of such REMIC or FASIT consist of  
46 property described in any of the preceding clauses of this subparagraph,  
47 except that if ninety-five percent or more of the assets of such REMIC  
48 or FASIT are assets described in clauses (i) through (v) of this subpar-  
49 agraph, the entire interest in the REMIC or FASIT shall qualify; (vii)  
50 any mortgage-backed security which represents ownership of a fractional  
51 undivided interest in a trust, the assets of which consist primarily of  
52 mortgage loans, provided that the real property which serves as security  
53 for the loans is (or from the proceeds of the loan, will become) the  
54 type of property described in clause (iv) of this subparagraph and any  
55 collateralized mortgage obligation, the security for which consists  
56 primarily of mortgage loans, provided that the real property which

1 serves as security for the loans is (or from the proceeds of the loan,  
2 will become) the type of property described in clause (iv) of this  
3 subparagraph; (viii) certificates of deposit in, or obligations of, a  
4 corporation organized under a state law which specifically authorizes  
5 such corporation to insure the deposits or share accounts of member  
6 associations; (ix) loans secured by an interest in real property located  
7 within any urban renewal area to be developed for predominantly residen-  
8 tial use under an urban renewal plan approved by the Secretary of Hous-  
9 ing and Urban Development under part A or part B of title I of the Hous-  
10 ing Act of 1949, as amended, or located within any area covered by a  
11 program eligible for assistance under section 103 of the Demonstration  
12 Cities and Metropolitan Development Act of 1966, as amended, and loans  
13 made for the improvement of any such real property; (x) loans secured by  
14 an interest in educational, health, or welfare institutions or facili-  
15 ties, including structures designed or used primarily for residential  
16 purposes for students, residents, and persons under care, employees, or  
17 members of the staff of such institutions or facilities; (xi) loans made  
18 for the payment of expenses of college or university education or voca-  
19 tional training; (xii) property used by the taxpayer in the conduct of  
20 business which consists principally of acquiring the savings of the  
21 public and investing in loans; (xiii) loans for which the taxpayer is  
22 the creditor and which are wholly secured by loans described in clause  
23 (iv) of this subparagraph, but excluding loans for which the taxpayer is  
24 the creditor to any banking corporation described in paragraphs one  
25 through seven of subsection (a) of section fourteen hundred fifty-two of  
26 this article or a real estate investment trust, as such term is defined  
27 in section 856 of the internal revenue code, and excluding loans which  
28 are treated by the taxpayer as subsidiary capital for purposes of the  
29 deductions provided by paragraph eleven of subsection (e) of this  
30 section; (xiv) small business loans or small farm loans located in low-  
31 income or moderate-income census tracts or block numbering areas deline-  
32 ated by the United States bureau of the census in the most recent decen-  
33 nal census; and (xv) community development loans or community  
34 development investments. For purposes of clause (xv) of this subpara-  
35 graph, a "community development loan" is a loan that (I) has as its  
36 primary purpose community development, (II) has not been reported or  
37 collected by the taxpayer for consideration in the taxpayer's community  
38 reinvestment act evaluation pursuant to the federal community reinvest-  
39 ment act of 1977, as amended, or section twenty-eight-b of the banking  
40 law as a mortgage loan described in clause (iv) of this subparagraph or  
41 a small business loan, small farm loan, or consumer loan, (III) benefits  
42 the taxpayer's assessment area or areas for purposes of the federal  
43 community reinvestment act of 1977, as amended or section twenty-eight-b  
44 of the banking law or a broader statewide or regional area that includes  
45 the taxpayer's assessment area, and (IV) is identified in the taxpayer's  
46 books and records as a community development loan for purposes of its  
47 community reinvestment act evaluation pursuant to the federal community  
48 reinvestment act of 1977, as amended or section twenty-eight-b of the  
49 banking law. For purposes of clause (xv) of this subparagraph, a "commu-  
50 nity development investment" is an investment in a security which has as  
51 its primary purpose community development and which is identified in the  
52 taxpayer's books and records as a qualified investment for purposes of  
53 its community reinvestment act evaluation pursuant to the federal commu-  
54 nity reinvestment act of 1977, as amended or section twenty-eight-b of  
55 the banking law. For purposes of the two preceding sentences, "community  
56 development" means (I) affordable housing (including multifamily rental

1 housing for low-income or moderate-income individuals); (II) community  
2 services targeted to low-income or moderate-income individuals; (III)  
3 activities that promote economic development by financing businesses or  
4 farms that meet the size eligibility standards of the small business  
5 administration's development company or small business investment compa-  
6 ny programs or have gross annual revenues of one million dollars or  
7 less; (IV) activities that revitalize or stabilize low-income or moder-  
8 ate-income census tracts or block numbering areas delineated by the  
9 United States bureau of the census in the most recent decennial census;  
10 or (V) activities that seek to prevent defaults and/or foreclosures in  
11 loans included in items (I) and (III) of this sentence.

12 (C) At the election of the taxpayer, the percentage specified in  
13 subparagraph (B) of this paragraph shall be applied on the basis of the  
14 average assets outstanding during the taxable year, in lieu of the close  
15 of the taxable year. For purposes of clause (iv) of subparagraph (B) of  
16 this paragraph, if a multifamily structure securing a loan is used in  
17 part for nonresidential use purposes, the entire loan is deemed a resi-  
18 dential real property loan if the planned residential use exceeds eighty  
19 percent of the property's planned use (determined as of the time the  
20 loan is made). Also, for purposes of clause (iv) of subparagraph (B) of  
21 this paragraph, loans made to finance the acquisition or development of  
22 land shall be deemed to be loans secured by an interest in residential  
23 real property if there is a reasonable assurance that the property will  
24 become residential real property within a period of three years from the  
25 date of acquisition of such land; but this sentence shall not apply for  
26 any taxable year unless, within such three year period, such land  
27 becomes residential real property. For purposes of determining whether  
28 any interest in a REMIC qualifies under clause (vi) of subparagraph (B)  
29 of this paragraph, any regular interest in another REMIC held by such  
30 REMIC shall be treated as a loan described in a preceding clause under  
31 principles similar to the principle of such clause (vi); except that if  
32 such REMICS are part of a tiered structure, they shall be treated as one  
33 REMIC for purposes of such clause (vi).

34 (2) For taxable years beginning before January first, two thousand  
35 ten, a thrift institution must exclude from the computation of its  
36 entire net income any amount allowed as a deduction for federal income  
37 tax purposes pursuant to sections 166, 585 or 593 of the internal reven-  
38 ue code.

39 (3) For taxable years beginning before January first, two thousand  
40 ten, a thrift institution shall be allowed as a deduction in computing  
41 entire net income the amount of a reasonable addition to its reserve for  
42 bad debts. This amount shall be equal to the sum of

43 (A) the amount determined to be a reasonable addition to the reserve  
44 for losses on nonqualifying loans, computed in the same manner as is  
45 provided with respect to additions to the reserves for losses on loans  
46 of banks under paragraph one of subsection (i) of this section, plus

47 (B) the amount determined by the taxpayer to be a reasonable addition  
48 to the reserve for losses on qualifying real property loans, but such  
49 amount shall not exceed the amount determined under paragraph four or  
50 five of this subsection, whichever is the larger, but the amount deter-  
51 mined under this subparagraph shall in no case be greater than the larg-  
52 er of

53 (i) the amount determined under such paragraph five, or

54 (ii) the amount which, when added to the amount determined under  
55 subparagraph (A) of this paragraph, equals the amount by which twelve  
56 percent of the total deposits or withdrawable accounts of depositors of

1 the taxpayer at the close of such year exceeds the sum of its surplus,  
2 undivided profits and reserves at the beginning of such year (taking  
3 into account any portion thereof attributable to the period before the  
4 first taxable year beginning after December thirty-first, nineteen  
5 hundred fifty-one).

6 The taxpayer must include in its tax return for each year a computa-  
7 tion of the amount of the addition to the bad debt reserve determined  
8 under this subsection. The use of a particular method in the return for  
9 a taxable year is not a binding election by the taxpayer.

10 (4) (A) Subject to subparagraphs (B) and (C) of this paragraph, the  
11 amount determined under this paragraph for the taxable year shall be an  
12 amount equal to thirty-two percent of the entire net income for such  
13 year.

14 (B) The amount determined under subparagraph (A) of this paragraph  
15 shall be reduced (but not below 0) by the amount determined under  
16 subparagraph (A) of paragraph three of this subsection.

17 (C) The amount determined under this paragraph shall not exceed the  
18 amount necessary to increase the balance at the close of the taxable  
19 year of the reserve for losses on qualifying real property loans to six  
20 percent of such loans outstanding at such time.

21 (D) For purposes of this paragraph, entire net income shall be  
22 computed

23 (i) by excluding from income any amount included therein by reason of  
24 subparagraph (B) of paragraph eight of this subsection,

25 (ii) without regard to any deduction allowable for any addition to the  
26 reserve for bad debts, and

27 (iii) by excluding from income an amount equal to the net gain for the  
28 taxable year arising from the sale or exchange of stock of a corporation  
29 or of obligations the interest on which is excludable from gross income  
30 under section 103 of the internal revenue code.

31 (iv) Whenever a thrift institution is properly includable in a  
32 combined return, entire net income, for purposes of this paragraph,  
33 shall not exceed the lesser of the thrift institution's separately  
34 computed entire net income as adjusted pursuant to clauses (i) through  
35 (iii) of this subparagraph or the combined group's entire net income as  
36 adjusted pursuant to clauses (i) through (iii) of this subparagraph.

37 (5) The amount determined under this paragraph for the taxable year  
38 shall be computed in the same manner as is provided under paragraph one  
39 of subsection (i) of this section with respect to additions to reserves  
40 for losses on loans of banks. Provided, however, that for any taxable  
41 year beginning after nineteen hundred ninety-five, for purposes of such  
42 computation, the base year shall be the later of (A) the last taxable  
43 year beginning in nineteen hundred ninety-five or (B) the last taxable  
44 year before the current year in which the amount determined under the  
45 provisions of subparagraph (B) of paragraph three of this subsection  
46 exceeded the amount allowable under this subparagraph.

47 (6) (A) (i) Each taxpayer described in paragraph one of this  
48 subsection shall establish and maintain a New York reserve for losses on  
49 qualifying real property loans, a New York reserve for losses on  
50 nonqualifying loans and a supplemental reserve for losses on loans. Such  
51 reserves shall be maintained for all subsequent taxable years that this  
52 subsection applies to the taxpayer. (ii) For purposes of this  
53 subsection, such reserves shall be treated as reserves for bad debts,  
54 but no deduction shall be allowed for any addition to the supplemental  
55 reserve for losses on loans. (iii) Except as noted below, the balances  
56 of each such reserve at the beginning of the first day of the first



1 taxable year beginning after December thirty-first, nineteen hundred  
2 ninety-five shall be the same as the balances maintained for federal  
3 income tax purposes in accordance with section 593(c)(1) of the internal  
4 revenue code as in existence on December thirty-first, nineteen hundred  
5 ninety-five for the last day of the last tax year beginning before Janu-  
6 ary first, nineteen hundred ninety-six. A taxpayer which maintained a  
7 New York reserve for loan losses on qualifying real property loans in  
8 the last tax year beginning before January first, nineteen hundred nine-  
9 ty-six shall have a continuation of such New York reserve balance in  
10 lieu of the amount determined under the preceding sentence. (iv)  
11 Notwithstanding clause (ii) of this subparagraph, any amount allocated  
12 to the reserve for losses on qualifying real property loans pursuant to  
13 section 593 (c) (5) of the internal revenue code as in effect immedi-  
14 ately prior to the enactment of the Tax Reform Act of 1976 shall not be  
15 treated as a reserve for bad debts for any purpose other than determin-  
16 ing the amount referred to in subparagraph (B) of paragraph three of  
17 this subsection, and for such purpose such amount shall be treated as  
18 remaining in such reserve.

19 (B) Any debt becoming worthless or partially worthless in respect of a  
20 qualifying real property loan shall be charged to the reserve for losses  
21 on such loans and any debt becoming worthless or partially worthless in  
22 respect of a nonqualifying loan shall be charged to the reserve for  
23 losses on nonqualifying loans, except that any such debt may, at the  
24 election of the taxpayer, be charged in whole or in part to the supple-  
25 mental reserve for losses on loans.

26 (C) The New York reserve for losses on qualifying real property loans  
27 shall be increased by the amount determined under subparagraph (B) of  
28 paragraph three of this subsection and the New York reserve for losses  
29 on nonqualifying loans shall be increased by the amount determined under  
30 subparagraph (A) of paragraph three of this subsection.

31 (7) (A) For purposes of this subsection, the term "qualifying real  
32 property loan" shall mean any loan secured by an interest in improved  
33 real property or secured by an interest in real property which is to be  
34 improved out of the proceeds of the loan. Such term shall include any  
35 mortgage-backed security which represents ownership of a fractional  
36 undivided interest in a trust, the assets of which consist primarily of  
37 mortgage loans, provided that the real property which serves as security  
38 for the loans is (or from the proceeds of the loan, will become) the  
39 type of property described in clauses (i) through (v) of subparagraph  
40 (B) of paragraph one of this subdivision. However, such term shall not  
41 include: (i) any loan evidenced by a security (as defined in section  
42 165(g) (2) (C) of the internal revenue code); (ii) any loan, whether or  
43 not evidenced by a security (as defined in such section 165(g) (2) (C)),  
44 the primary obligor of which is (I) a government or political subdivi-  
45 sion or instrumentality thereof, (II) a banking corporation, or (III)  
46 any corporation sixty-five percent or more of whose voting stock is  
47 owned or controlled, directly or indirectly, by the taxpayer or by a  
48 banking corporation or bank holding company that owns or controls,  
49 directly or indirectly, sixty-five percent or more of the voting stock  
50 of the taxpayer; (iii) any loan, to the extent secured by a deposit in  
51 or share of the taxpayer; or (iv) any loan which, within a sixty-day  
52 period beginning in one taxable year of the creditor and ending in its  
53 next taxable year, is made or acquired and then repaid or disposed of,  
54 unless the transactions by which such loan was made or acquired and then  
55 repaid or disposed of are established to be for bona fide business  
56 purposes.



1 (B) For purposes of this subsection, the term "nonqualifying loan"  
2 shall mean any loan which is not a qualifying real property loan.

3 (C) For purposes of this subsection, the term "loan" shall mean debt,  
4 as the term "debt" is used in section 166 of the internal revenue code.

5 (D) A regular or residual interest in a REMIC, as such term is defined  
6 in section 860D of the internal revenue code, shall be treated as a  
7 qualifying real property loan, except that, if less than ninety-five  
8 percent of the assets of such REMIC are qualifying real property loans  
9 (determined as if the taxpayer held the assets of the REMIC), such  
10 interest shall be so treated only in the proportion which the assets of  
11 such REMIC consist of such loans. For purposes of determining whether  
12 any interest in a REMIC qualifies under the preceding sentence, any  
13 interest in another REMIC held by such REMIC shall be treated as a qual-  
14 ifying real property loan under principles similar to the principles of  
15 the preceding sentence, except that if such REMICS are part of a tiered  
16 structure, they shall be treated as one REMIC for purposes of this para-  
17 graph.

18 (8)(A) Any distribution of property (as defined in section 317(a) of  
19 the internal revenue code) by a thrift institution to a shareholder with  
20 respect to its stock, if such distribution is not allowable as a  
21 deduction under section 591 of such code, shall be treated as made

22 (i) first out of its New York earnings and profits accumulated in  
23 taxable years beginning after December thirty-first, nineteen hundred  
24 fifty-one, to the extent thereof,

25 (ii) then out of the New York reserve for losses on qualifying real  
26 property loans, to the extent additions to such reserve exceed the addi-  
27 tions which would have been allowed under paragraph five of this  
28 subsection,

29 (iii) then out of the supplemental reserve for losses on loans, to the  
30 extent thereof,

31 (iv) then out of such other accounts as may be proper.

32 This subparagraph shall apply in the case of any distribution in redemp-  
33 tion of stock or in partial or complete liquidation of a thrift institu-  
34 tion, except that any such distribution shall be treated as made first  
35 out of the amount referred to in clause (ii) of this subparagraph,  
36 second out of the amount referred to in clause (iii) of this subpara-  
37 graph, third out of the amount referred to in clause (i) of this subpar-  
38 agraph and then out of such other accounts as may be proper. This  
39 subparagraph shall not apply to any transaction to which section 381 of  
40 such code (relating to carryovers and certain corporate acquisitions)  
41 applies, or to any distribution to the federal savings and loan insur-  
42 ance corporation or the federal deposit insurance corporation in redemp-  
43 tion of an interest in an association or institution, if such interest  
44 was originally received by the federal savings and loan insurance corpo-  
45 ration or the federal deposit insurance corporation in exchange for  
46 financial assistance pursuant to section 406(f) of the federal national  
47 housing act or pursuant to subsection (c) of section thirteen of the  
48 federal deposit insurance act.

49 (B) If any distribution is treated under subparagraph (A) of this  
50 paragraph as having been made out of the reserves described in clauses  
51 (ii) and (iii) of such subparagraph, the amount charged against such  
52 reserve shall be the amount which, when reduced by the amount of tax  
53 imposed under the internal revenue code and attributable to the inclu-  
54 sion of such amount in gross income, is equal to the amount of such  
55 distribution; and the amount so charged against such reserve shall be  
56 included in the entire net income of the taxpayer.

1 (C) (i) For purposes of clause (ii) of subparagraph (A) of this para-  
2 graph, additions to the New York reserve for losses on qualifying real  
3 property loans for the taxable year in which the distribution occurs  
4 shall be taken into account.

5 (ii) For purposes of computing under this subsection the amount of a  
6 reasonable addition to the New York reserve for losses on qualifying  
7 real property loans for any taxable year, the amount charged during any  
8 year to such reserve pursuant to the provisions of subparagraph (B) of  
9 this paragraph shall not be taken into account.

10 (9) A taxpayer which maintains a New York reserve for losses on quali-  
11 fying real property loans and which ceases to meet the definition of a  
12 thrift institution as defined in paragraph one of this subsection, must  
13 include in its entire net income for the last taxable year such para-  
14 graph applied the excess of its New York reserve for losses on qualify-  
15 ing real property loans over the greater of (A) its reserve for losses  
16 on qualifying real property loans as of the last day of the last taxable  
17 year such reserve is maintained for federal income tax purposes or (B)  
18 the balance of the New York reserve for losses on qualifying real prop-  
19 erty loans which would be allowable to the taxpayer for the last taxable  
20 year such taxpayer met such definition of a thrift institution if the  
21 taxpayer had computed its reserve balance pursuant to the method  
22 described in subparagraph (A) of paragraph one of subsection (i) of this  
23 section.

24 (i) (1) For taxable years beginning before January first, two thousand  
25 ten, a taxpayer subject to the provisions of section 585(c) of the  
26 internal revenue code and not subject to subsection (h) of this section  
27 may, in computing entire net income, deduct an amount equal to or less  
28 than the amount determined pursuant to subparagraph (A) of this para-  
29 graph or subparagraph (B) of this paragraph, whichever is greater.  
30 Provided, however, in no event shall the deduction be less than the  
31 amount determined pursuant to such subparagraph (A).

32 (A) The amount determined pursuant to this subparagraph shall be the  
33 amount necessary to increase the balance of its New York reserve for  
34 losses on loans (at the close of the taxable year) to the amount which  
35 bears the same ratio to loans outstanding at the close of the taxable  
36 year as (i) the total bad debts sustained during the taxable year and  
37 the five preceding taxable years (or, with the approval of the commis-  
38 sioner of taxation and finance, a shorter period), adjusted for recov-  
39 eries of bad debts during such period, bears to (ii) the sum of the  
40 loans outstanding at the close of such six or fewer taxable years.

41 (B) (i) The amount determined pursuant to this subparagraph shall be  
42 the amount necessary to increase the balance of its New York reserve for  
43 losses on loans (at the close of the taxable year) to the lower of --

44 (I) the balance of the reserve at the close of the base year, or

45 (II) if the amount of loans outstanding at the close of the taxable  
46 year is less than the amount of loans outstanding at the close of the  
47 base year, the amount which bears the same ratio to loans outstanding at  
48 the close of the taxable year as the balance of the reserve at the close  
49 of the base year bears to the amount of loans outstanding at the close  
50 of the base year.

51 (ii) For purposes of this paragraph, the base year shall be (I) for  
52 taxable years beginning in nineteen hundred eighty-seven, the last tax-  
53 able year before the most recent adoption of the experience method for  
54 federal income tax purposes or for purposes of this article, whichever  
55 is earlier, and (II) for taxable years beginning after nineteen hundred

1 eighty-seven, the last taxable year beginning before nineteen hundred  
2 eighty-eight.

3 (2) (A) For taxable years beginning before January first, two thousand  
4 ten, each taxpayer described in paragraph one of this subsection shall  
5 establish and maintain a New York reserve for losses on loans. Such  
6 reserve shall be maintained for all subsequent taxable years. The  
7 balance of the New York reserve for losses on loans at the beginning of  
8 the first day of the first taxable year the taxpayer becomes subject to  
9 this subsection shall be the same as the balance at the beginning of  
10 such day of the reserve for losses on loans maintained for federal  
11 income tax purposes. The New York reserve for losses on loans shall be  
12 reduced by an amount equal to the deduction allowed, but not more than  
13 the amount allowable, for worthless debts for federal income tax  
14 purposes pursuant to section 166 of the internal revenue code plus the  
15 amount, if any, charged against its reserve for losses on loans pursuant  
16 to section 585(c)(4) of such code.

17 (B) For purposes of subparagraph (A) of this paragraph, a taxpayer  
18 which had previously been subject to the provisions of subsection (h) of  
19 this section shall establish a New York reserve for losses on loans  
20 equal to the sum of (i) the greater of (I) the balance of its federal  
21 reserve for losses on qualifying real property loans as of the first day  
22 of the first taxable year the taxpayer becomes subject to the provisions  
23 of this subsection or (II) the greater of the amounts determined under  
24 subparagraphs (A) and (B) of paragraph nine of subsection (h) of this  
25 section in the year such paragraph applied to the taxpayer, (ii) the  
26 greater of (I) the balance in its federal reserve for losses on nonqual-  
27 ifying loans as of the first day of the first taxable year the taxpayer  
28 becomes subject to this subsection or (II) the balance in its New York  
29 reserve for losses on nonqualifying loans as of the last date the  
30 taxpayer was subject to the provisions of subsection (h) of this section  
31 and (iii) the balance in its supplemental reserve for losses on loans as  
32 of the last date the taxpayer was subject to the provisions of  
33 subsection (h) of this section.

34 (3) The determination and treatment of the New York reserve balance,  
35 including any additions thereto, subtractions therefrom, or recapture  
36 thereof, for

37 (A) any banking corporation which was subject to tax for federal  
38 income tax purposes but not subject to tax under this article for prior  
39 taxable years,

40 (B) any taxpayer which ceases to be subject to tax under this article,  
41 or

42 (C) any other unusual circumstances  
43 shall be determined by the commissioner of taxation and finance.  
44 Provided, however, any banking corporation which was subject to tax for  
45 federal income tax purposes but not subject to tax under this article  
46 for prior taxable years shall have as its opening New York reserve for  
47 losses on loans the amount determined by applying the provisions of  
48 subparagraph (A) of paragraph one of this subsection to loans outstand-  
49 ing at the close of its last taxable year for federal income tax  
50 purposes ending prior to the first taxable year for which the taxpayer  
51 is subject to tax under this article and provided, further, that the  
52 provisions of subparagraph (B) of paragraph one of this subsection shall  
53 not apply.

54 (j) (1) In the case of property placed in service prior to January  
55 first, nineteen hundred seventy-three, for which the taxpayer properly  
56 adopted a different method of computing depreciation under section two

1 hundred nineteen-z or section two hundred nineteen-xx of this chapter  
2 (as such sections were in effect on or before December thirty-first,  
3 nineteen hundred seventy-two) than was adopted for federal income tax  
4 purposes with respect to such property, entire net income under this  
5 article shall be computed without regard to the amount allowable as a  
6 deduction for depreciation of such property in computing federal taxable  
7 income for the taxable year but, in lieu thereof, shall be computed as  
8 if such deduction were determined by the method of depreciation adopted  
9 with respect to such property under sections two hundred nineteen-z or  
10 two hundred nineteen-xx of this chapter (as such sections were in effect  
11 on or before December thirty-first, nineteen hundred seventy-two).

12 (2) In computing entire net income, the amount allowable as a  
13 deduction for charitable contributions for federal income tax purposes  
14 shall be decreased by any amount allowed as a deduction for federal  
15 income tax purposes for the taxable year under section one hundred  
16 seventy of the internal revenue code as a carryover of excess contrib-  
17 utions which are not made in such taxable year and which were deductible  
18 in computing the tax due under article nine-B or nine-C of this chapter  
19 (as such articles were in effect on or before December thirty-first,  
20 nineteen hundred seventy-two).

21 (3) There shall be excluded from the computation of entire net income  
22 any amount allowed as a deduction for federal income tax purposes for  
23 the taxable year under section twelve hundred twelve of the internal  
24 revenue code as a capital loss carryforward to the taxable year, which  
25 was deductible as a loss in computing the tax due under article nine-B  
26 or nine-C of this chapter (as such articles were in effect on December  
27 thirty-first, nineteen hundred seventy-two).

28 (4) There shall be excluded from the computation of entire net income  
29 the amount of any income or gain from the sale of real or personal prop-  
30 erty which is includible in determining federal taxable income for the  
31 taxable year pursuant to the installment method under section four  
32 hundred fifty-three of the internal revenue code, to the extent that  
33 such income or gain was includible in the computation of the tax due  
34 under article nine-B or nine-C of this chapter (as such articles were in  
35 effect on December thirty-first, nineteen hundred seventy-two).

36 (5) To the extent not otherwise provided in this article, there shall  
37 be excluded from entire net income the amount necessary to prevent the  
38 taxation under this article of any other amount of income or gain which  
39 was properly included in income or gain and was taxable under article  
40 nine-B or nine-C of this chapter (as such articles were in effect on or  
41 before December thirty-first, nineteen hundred seventy-two) and there  
42 shall be disallowed as a deduction in computing entire net income any  
43 amount which was allowable as a deduction in computing the tax due under  
44 such articles (as they were in effect on or before December thirty-  
45 first, nineteen hundred seventy-two).

46 (k) (1) At the election of the taxpayer, there shall be deducted from  
47 the portion of its entire net income allocated within the state, depre-  
48 ciation with respect to any property such as described in paragraph two  
49 of this subsection, not exceeding twice the depreciation allowed with  
50 respect to the same property for federal income tax purposes. Such  
51 deduction shall be allowed only upon condition that entire net income be  
52 computed without any deduction for depreciation or amortization of the  
53 same property, and the total of all deductions allowed under article  
54 nine-B or nine-C of this chapter (as such articles were in effect on or  
55 before December thirty-first, nineteen hundred seventy-two) and this

1 article in any taxable year or years with respect to the depreciation of  
2 any such property shall not exceed its cost or other basis.

3 (2) Such deduction shall be allowed only with respect to tangible  
4 property which is depreciable pursuant to section one hundred sixty-sev-  
5 en of the internal revenue code, having a situs in this state and used  
6 in the taxpayer's business, (i) constructed, reconstructed or erected  
7 after December thirty-first, nineteen hundred sixty-three, pursuant to a  
8 contract which was, on or before December thirty-first, nineteen hundred  
9 sixty-seven, and at all times thereafter, binding on the taxpayer or,  
10 property, the physical construction, reconstruction or erection of which  
11 began on or before December thirty-first, nineteen hundred sixty-seven  
12 or which began after such date pursuant to an order placed on or before  
13 December thirty-first, nineteen hundred sixty-seven, and then only with  
14 respect to that portion of the basis thereof which is properly attribut-  
15 able to such construction, reconstruction or erection after December  
16 thirty-first, nineteen hundred sixty-three, or (ii) acquired after  
17 December thirty-first, nineteen hundred sixty-three, pursuant to a  
18 contract which was, on or before December thirty-first, nineteen hundred  
19 sixty-seven, and at all times thereafter, binding on the taxpayer or  
20 pursuant to an order placed on or before December thirty-first, nineteen  
21 hundred sixty-seven, by purchase as defined in section one hundred  
22 seventy-nine (d) of the internal revenue code, if the original use of  
23 such property commenced with the taxpayer, commenced in this state and  
24 commenced after December thirty-first, nineteen hundred sixty-three, or  
25 (iii) acquired, constructed, reconstructed, or erected subsequent to  
26 December thirty-first nineteen hundred sixty-seven, if such acquisition,  
27 construction, reconstruction or erection is pursuant to a plan of the  
28 taxpayer which was in existence December thirty-first, nineteen hundred  
29 sixty-seven and not thereafter substantially modified, and such acquisi-  
30 tion, construction, reconstruction or erection would qualify under the  
31 rules in paragraphs four, five or six of subsection (h) of section  
32 forty-eight of the internal revenue code provided all references in such  
33 paragraphs four, five and six to the dates October nine, nineteen  
34 hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be  
35 read as December thirty-first, nineteen hundred sixty-seven. A taxpayer  
36 shall be allowed a deduction under clauses (i), (ii) or (iii) of this  
37 paragraph only if the tangible property shall be delivered or the  
38 construction, reconstruction or erection shall be completed on or before  
39 December thirty-first, nineteen hundred sixty-nine, except in the case  
40 of tangible property which is acquired, constructed, reconstructed or  
41 erected pursuant to a contract which was, on or before December thirty-  
42 first, nineteen hundred sixty-seven, and at all times thereafter, bind-  
43 ing on the taxpayer. Provided, however, for any taxable year beginning  
44 on or after January first, nineteen hundred sixty-eight, a taxpayer  
45 shall not be allowed a deduction under paragraph one of this subsection  
46 with respect to tangible personal property leased by it to any other  
47 person or corporation. For purposes of the preceding sentence, any  
48 contract or agreement to lease or rent or for a license to use such  
49 property shall be considered a lease. With respect to property which the  
50 taxpayer uses itself for purposes other than leasing for part of a taxa-  
51 ble year and leases for a part of a taxable year, the taxpayer shall be  
52 allowed a deduction under paragraph one of this subsection in proportion  
53 to the part of the year it uses such property.

54 (3) If the deduction allowable for any taxable year pursuant to this  
55 subsection exceeds the portion of the taxpayer's entire net income allo-  
56 cated to this state for such year, the excess may be carried over to the



1 following taxable year or years and may be deducted from the portion of  
2 the taxpayer's entire net income allocated to this state for such year  
3 or years.

4 (4) In any taxable year when property is sold or otherwise disposed  
5 of, with respect to which a deduction has been allowed pursuant to this  
6 subsection, subdivision twelve of section two hundred nineteen-z or  
7 subdivision ten of section two hundred nineteen-xx of this chapter (as  
8 such subdivisions were in effect on or before December thirty-first,  
9 nineteen hundred seventy-two), the gain or loss entering into the compu-  
10 tation of federal taxable income shall be disregarded in computing  
11 entire net income, and there shall be added or subtracted from the  
12 portion of entire net income allocated within the state the gain or loss  
13 upon such sale or other disposition. In computing such gain or loss the  
14 basis of the property sold or disposed of shall be adjusted to reflect  
15 the deduction allowed with respect to such property pursuant to para-  
16 graph one of this subsection. Provided however, that no loss shall be  
17 recognized for the purposes of this paragraph with respect to a sale or  
18 other disposition of property to a person whose acquisition thereof is  
19 not a purchase as defined in section one hundred seventy-nine (d) of the  
20 internal revenue code.

21 (k-1) A net operating loss deduction shall be allowed which shall be  
22 presumably the same as the net operating loss deduction allowed under  
23 section one hundred seventy-two of the internal revenue code, except  
24 that in every instance where such deduction is allowed under this arti-  
25 cle:

26 (1) any net operating loss included in determining such deduction  
27 shall be adjusted to reflect the inclusions and exclusions from entire  
28 net income required by the other provisions of this section,

29 (2) such deduction shall not include any net operating loss sustained  
30 during any taxable year beginning prior to January first, two thousand  
31 one, or during any taxable year in which the taxpayer was not subject to  
32 the tax imposed by this article,

33 (3) such deduction shall not exceed the deduction for the taxable year  
34 allowed under section one hundred seventy-two of the internal revenue  
35 code augmented by the excess of the amount allowed as a deduction pursu-  
36 ant to subsection (h) or (i) of this section, whichever is applicable,  
37 over the amount allowed as a deduction pursuant to section 166 or 585 of  
38 the internal revenue code, for each taxable year in which the taxpayer  
39 had a net operating loss which is carried to the taxable year of the  
40 deduction under this provision, in the aggregate, (except to the extent  
41 such excess was previously deducted in computing entire net income), and

42 (4) the net operating loss deduction allowed under section one hundred  
43 seventy-two of the internal revenue code shall for purposes of this  
44 subsection be determined as if the taxpayer had elected under such  
45 section to relinquish the entire carryback period with respect to net  
46 operating losses.

47 (l) In the case of a savings and insurance bank which conducts a life  
48 insurance business through a life insurance department under the author-  
49 ity of former article six-A of the banking law, entire net income means  
50 the federal taxable income which such bank is required to report to the  
51 United States treasury department under paragraph one of subsection (a)  
52 of section five hundred ninety-four of the internal revenue code and the  
53 modifications required by this section in computing entire net income  
54 shall only be made with respect to such federal taxable income.

1 (m) If the period covered by a return under this article is other than  
2 the period covered by the return to the United States treasury depart-  
3 ment,

4 (1) except as provided in paragraph two of this subsection, entire net  
5 income and alternative entire net income shall be determined by multi-  
6 plying the taxable income reported to such department (as adjusted  
7 pursuant to the provisions of this article) by the number of calendar  
8 months or major parts thereof covered by the return under this article  
9 and dividing by the number of calendar months or major parts thereof  
10 covered by the return to such department. If it shall appear that such  
11 method of determining entire net income or alternative entire net income  
12 does not properly reflect the taxpayer's income during the period  
13 covered by the return under this article, the commissioner shall be  
14 authorized in his or her discretion to determine such entire net income  
15 or alternative entire net income solely on the basis of the taxpayer's  
16 income during the period covered by its return under this article.

17 (2) in the case of a New York S termination year, an equal portion of  
18 entire net income shall be assigned to each day of such year. The  
19 portion of such entire net income thereby assigned to the S short year  
20 and the C short year shall be included in the respective returns for the  
21 S short year and the C short year under this article. However, where  
22 paragraph three of subsection (s) of section six hundred twelve of this  
23 chapter applies, the portion of such entire net income assigned to the S  
24 short year and the C short year shall be determined under normal  
25 accounting rules.

26 (n) The tax commission may, whenever necessary in order properly to  
27 reflect the entire net income of any taxpayer, determine the year or  
28 period in which any item of income or deduction shall be included, with-  
29 out regard to the method of accounting employed by the taxpayer.

30 (o) QSSS. (1) New York S corporation. In the case of a New York S  
31 corporation which is the parent of a qualified subchapter S subsidiary  
32 (QSSS) with respect to a taxable year:

33 (A) where the QSSS is not an excluded corporation,

34 (i) in determining the entire net income of such parent corporation,  
35 all assets, liabilities, income and deductions of the QSSS shall be  
36 treated as assets, liabilities, income and deductions of the parent  
37 corporation, and

38 (ii) the QSSS shall be exempt from all taxes imposed by this article,  
39 and

40 (B) where the QSSS is an excluded corporation, the entire net income  
41 of the parent corporation shall be determined as if the federal QSSS  
42 election had not been made.

43 (2) New York C corporation. In the case of a New York C corporation  
44 which is the parent of a QSSS with respect to a taxable year:

45 (A) where the QSSS is a taxpayer,

46 (i) in determining the entire net income of such parent corporation,  
47 all assets, liabilities, income and deductions of the QSSS shall be  
48 treated as assets, liabilities, income and deductions of the parent  
49 corporation, and

50 (ii) the QSSS shall be exempt from all taxes imposed by this article,  
51 and

52 (B) where the QSSS is not a taxpayer,

53 (i) if the QSSS is not an excluded corporation, the parent corporation  
54 may make a QSSS inclusion election to include all assets, liabilities,  
55 income and deductions of the QSSS as assets, liabilities, income and  
56 deductions of the parent corporation, and

1 (ii) in the absence of such election, or where the QSSS is an excluded  
2 corporation, the entire net income of the parent corporation shall be  
3 determined as if the federal QSSS election had not been made.

4 (3) Non-New York S corporation not excluded. In the case of an S  
5 corporation which is not a taxpayer and not an excluded corporation, and  
6 which is the parent of a QSSS which is a taxpayer, the shareholders of  
7 the parent corporation shall be entitled to make the New York S election  
8 under subsection (a) of section six hundred sixty of this chapter.

9 (A) For any taxable year for which such election is in effect, the  
10 parent corporation shall be subject to tax under this article as a New  
11 York S corporation, and the provisions of subparagraph (A) of paragraph  
12 one of this subsection shall apply.

13 (B) For any taxable year for which such election is not in effect, the  
14 QSSS shall be a New York C corporation, and the entire net income of the  
15 QSSS shall be determined as if the federal QSSS election had not been  
16 made. For purposes of such determination, the taxable year of the parent  
17 corporation shall constitute the taxable year of the QSSS, excluding,  
18 however, any portion of such year during which the QSSS is not a taxpay-  
19 er.

20 (4) S corporation excluded. In the case of an S corporation which is  
21 an excluded corporation and which is the parent of a QSSS which is a  
22 taxpayer, the QSSS shall be a New York C corporation and the provisions  
23 of subparagraph (B) of paragraph three of this subsection shall apply.

24 (5) Excluded corporation. The term "excluded corporation" means a  
25 corporation subject to tax under sections one hundred eighty-three  
26 through one hundred eighty-five of this chapter, inclusive, or article  
27 nine-A or thirty-three of this chapter, or a foreign corporation not  
28 taxable by this state which, if it were taxable, would be subject to tax  
29 under any of such sections or articles.

30 (6) Taxpayer. For purposes of this paragraph, the term "taxpayer"  
31 means a parent corporation or QSSS subject to tax under this article,  
32 determined without regard to the provisions of this paragraph.

33 (7) QSSS inclusion election. The election under clause (i) of subpara-  
34 graph (B) of paragraph two of this subsection shall be effective for the  
35 taxable year for which made and for all succeeding taxable years of the  
36 corporation until such election is terminated. An election or termi-  
37 nation shall be made on such form and in such manner as the commissioner  
38 may prescribe by regulation or instruction.

39 (p) Emerging technology investment deferral. In the case of any sale  
40 of a qualified emerging technologies investment held for more than thir-  
41 ty-six months and with respect to which the taxpayer elects the applica-  
42 tion of this subsection, gain from such sale shall be recognized only to  
43 the extent that the amount realized on such sale exceeds the cost of any  
44 qualified emerging technologies investment purchased by the taxpayer  
45 during the three hundred sixty-five-day period beginning on the date of  
46 such sale, reduced by any portion of such cost previously taken into  
47 account under this subsection. For purposes of this subsection the  
48 following shall apply:

49 (1) A qualified investment is stock of a corporation or an interest,  
50 other than as a creditor, in a partnership or limited liability company  
51 that was acquired by the taxpayer as provided in Internal Revenue Code §  
52 1202(c)(1)(B), except that the reference to the term "stock" in such  
53 section shall be read as "investment," or by the taxpayer from a person  
54 who had acquired such stock or interest in such a manner.

55 (2) A qualified emerging technology investment is a qualified invest-  
56 ment, that was held by the taxpayer for at least thirty-six months, in a

company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies investment that is sold, the taxpayer's holding period for such investment and the qualified emerging technologies investment that is purchased shall be determined without regard to Internal Revenue Code § 1223.

(q) Amounts deferred. The amount deferred under subsection (p) of this section shall be added to entire net income when the reinvestment in the New York qualified emerging technology company which qualified a taxpayer for such deferral is sold.

(r) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in subsection (u) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 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.

(s) 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 state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession 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 state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction 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 jurisdiction 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 jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction 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

1 by the commissioner, and include amounts allowable as interest  
2 deductions under section one hundred sixty-three of the internal revenue  
3 code to the extent such amounts are directly or indirectly for, related  
4 to or in connection with the acquisition, use, maintenance or manage-  
5 ment, ownership, sale, exchange or disposition of such intangible  
6 assets.

7 (D) Valid business purpose. A valid business purpose is one or more  
8 business purposes, other than the avoidance or reduction of taxation,  
9 which alone or in combination constitute the primary motivation for some  
10 business activity or transaction, which activity or transaction changes  
11 in a meaningful way, apart from tax effects, the economic position of  
12 the taxpayer. The economic position of the taxpayer includes an increase  
13 in the market share of the taxpayer, or the entry by the taxpayer into  
14 new business markets.

15 (2) Royalty expense add backs. (A) Except where a taxpayer is included  
16 in a combined return with a related member pursuant to subsection (f) of  
17 section fourteen hundred sixty-two of this article, for the purpose of  
18 computing entire net income, a taxpayer must add back royalty payments  
19 directly or indirectly paid, accrued, or incurred in connection with one  
20 or more direct or indirect transactions with one or more related members  
21 during the taxable year to the extent deductible in calculating federal  
22 taxable income.

23 (B) Exceptions. (i) The adjustment required in this subsection shall  
24 not apply to the portion of the royalty payment that the taxpayer estab-  
25 lishes, by clear and convincing evidence of the type and in the form  
26 specified by the commissioner, meets all of the following requirements:  
27 (I) the related member was subject to tax in this state or another state  
28 or possession of the United States or a foreign nation or some combina-  
29 tion thereof on a tax base that included the royalty payment paid,  
30 accrued or incurred by the taxpayer; (II) the related member during the  
31 same taxable year directly or indirectly paid, accrued or incurred such  
32 portion to a person that is not a related member; and (III) the trans-  
33 action giving rise to the royalty payment between the taxpayer and the  
34 related member was undertaken for a valid business purpose.

35 (ii) The adjustment required in this subsection shall not apply if the  
36 taxpayer establishes, by clear and convincing evidence of the type and  
37 in the form specified by the commissioner, that: (I) the related member  
38 was subject to tax on or measured by its net income in this state or  
39 another state or possession of the United States or some combination  
40 thereof; (II) the tax base for said tax included the royalty payment  
41 paid, accrued or incurred by the taxpayer; and (III) the aggregate  
42 effective rate of tax applied to the related member in those jurisdic-  
43 tions is no less than eighty percent of the statutory rate of tax that  
44 applied to the taxpayer under section fourteen hundred fifty-five of  
45 this article for the taxable year.

46 (iii) The adjustment required in this subsection shall not apply if  
47 the taxpayer establishes, by clear and convincing evidence of the type  
48 and in the form specified by the commissioner, that: (I) the royalty  
49 payment was paid, accrued or incurred to a related member organized  
50 under the laws of a country other than the United States; (II) the  
51 related member's income from the transaction was subject to a comprehen-  
52 sive income tax treaty between such country and the United States; (III)  
53 the related member was subject to tax in a foreign nation on a tax base  
54 that included the royalty payment paid, accrued or incurred by the  
55 taxpayer; (IV) the related member's income from the transaction was  
56 taxed in such country at an effective rate of tax at least equal to that



1 imposed by this state; and (V) the royalty payment was paid, accrued or  
2 incurred pursuant to a transaction that was undertaken for a valid busi-  
3 ness purpose and using terms that reflect an arm's length relationship.

4 (iv) The adjustment required in this subsection shall not apply if the  
5 taxpayer and the commissioner agree in writing to the application or use  
6 of alternative adjustments or computations. The commissioner may, in his  
7 or her discretion, agree to the application or use of alternative  
8 adjustments or computations when he or she concludes that in the absence  
9 of such agreement the income of the taxpayer would not be properly  
10 reflected.

11 (t) For taxable years beginning after December thirty-first, two thou-  
12 sand two, upon the disposition of property to which subsection (r) of  
13 this section applies, the amount of any gain or loss includible in  
14 entire net income shall be adjusted to reflect the inclusions and exclu-  
15 sions from entire net income pursuant to paragraph thirteen of  
16 subsection (b) of this section attributable to such property.

17 (u) For purposes of subsections (r) and (t) of this section, qualified  
18 resurgence zone property shall mean qualified property described in  
19 paragraph two of subsection k of section 168 of the internal revenue  
20 code substantially all of the use of which is in the resurgence zone, as  
21 defined below, and is in the active conduct of a trade or business by  
22 the taxpayer in such zone, and the original use of which in the resur-  
23 gence zone commences with the taxpayer after December thirty-first, two  
24 thousand two. The resurgence zone shall mean the area of New York county  
25 bounded on the south by a line running from the intersection of the  
26 Hudson River with the Holland Tunnel, and running thence east to Canal  
27 Street, then running along the centerline of Canal Street to the inter-  
28 section of the Bowery and Canal Street, running thence in a southeaster-  
29 ly direction diagonally across Manhattan Bridge Plaza, to the Manhattan  
30 Bridge and thence along the centerline of the Manhattan Bridge to the  
31 point where the centerline of the Manhattan Bridge would intersect with  
32 the easterly bank of the East River, and bounded on the north by a line  
33 running from the intersection of the Hudson River with the Holland  
34 Tunnel and running thence north along West Avenue to the intersection of  
35 Clarkson Street then running east along the centerline of Clarkson  
36 Street to the intersection of Washington Avenue, then running south  
37 along the centerline of Washington Avenue to the intersection of West  
38 Houston Street, then east along the centerline of West Houston Street,  
39 then at the intersection of the Avenue of the Americas continuing east  
40 along the centerline of East Houston Street to the easterly bank of the  
41 East River.

42 (v) Disallowed investment proceeds from a REIT or RIC. (1)(A) As used  
43 in this subsection, the term "REIT" means a real estate investment trust  
44 as defined in section eight hundred fifty-six of the internal revenue  
45 code.

46 (B) As used in this subsection, the term "RIC" means a regulated  
47 investment company as defined in section eight hundred fifty-one of the  
48 internal revenue code.

49 (C) As used in this subsection, the term "REIT holding company" means  
50 a corporation that (i) owns, directly or indirectly, over fifty percent  
51 of the capital stock of a REIT, or (ii) in connection with one or more  
52 other corporations in its affiliated group (as such term is defined in  
53 section fifteen hundred four of the internal revenue code without regard  
54 to the exclusions provided for in subsection (b) of such section fifteen  
55 hundred four), owns over fifty percent of the capital stock of a REIT.

(D) As used in this subsection, the term "RIC holding company" means a corporation that (i) owns, directly or indirectly, over fifty percent of the capital stock of a RIC, or (ii) in connection with one or more other corporations in its 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 fifteen hundred four), owns over fifty percent of the capital stock of a RIC.

(2) For purposes of computing entire net income or other applicable taxable base, there shall be no deduction for disallowed investment proceeds as defined in paragraphs three and four of this subsection.

(3) For purposes of the deduction of gains in excess of losses under subparagraph (iii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) gain or loss from the disposition of an ownership interest in a REIT, (B) gain or loss from the disposition of an ownership interest in a RIC, and (C) gain or loss from the disposition of an ownership interest in a REIT holding company or a RIC holding company to the extent the gain or loss is attributable to such holding company's ownership interest in a REIT or a RIC.

(4) For purposes of the deduction of dividend income from subsidiary capital under subparagraph (ii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) dividends from a REIT, and (B) dividends from a RIC, (C) dividends from a REIT holding company or a RIC holding company to the extent the dividends are attributable to such holding company's ownership interest in a REIT or a RIC.

(5) Notwithstanding paragraphs three and four of this subsection,

(A) disallowed investment proceeds shall not include any dividends from, or attributable to, a REIT or a RIC required to be included in a combined report pursuant to subdivisions five or seven of section two hundred nine of this chapter to the extent such dividends were included in the computation of combined entire net income; and

(B) a banking corporation, or a group of banking corporations properly included in a combined return, with taxable assets (or combined taxable assets in the case of a combined return) for the taxable year of eight billion dollars or less shall not have any disallowed investment proceeds.

§ 1453-A. Computation of alternative entire net income. (a) Alternative entire net income means entire net income as determined pursuant to section fourteen hundred fifty-three of this article, except that the deductions described in paragraphs eleven and twelve of subsection (e) of section fourteen hundred fifty-three of this article shall not be allowed.

(b) Any election made pursuant to paragraph two of subsection (b) of section fourteen hundred fifty-four of this article with respect to the modification provided for in subsection (f) of section fourteen hundred fifty-three of this article shall be deemed to have been made for purposes of computing alternative entire net income.

§ 1454. 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 state, 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 state, except wages, salaries and other personal service compensation of general executive officers, bears to the total wages, salaries and other personal service

1 compensation during the taxable year of all the taxpayer's employees  
2 within and without the state, except wages, salaries and other personal  
3 service compensation of general executive officers.

4 (2) (A) The taxpayer shall ascertain the percentage which the receipts  
5 of the taxpayer arising during the taxable year from:

6 (i) loans (including a taxpayer's portion of a participation in a  
7 loan) and financing leases within the state, and all other business  
8 receipts earned within the state, bear to

9 (ii) the total amount of the taxpayer's receipts from loans (including  
10 a taxpayer's portion of a participation in a loan) and financing leases  
11 and all other business receipts within and without the state.

12 (B) All interest from loans and financing leases is located where the  
13 greater portion of income producing activity related to the loan or  
14 financing lease occurred; provided, however:

15 (i) In the case of a taxpayer described in paragraph one, two, three,  
16 four, five or seven of subsection (a) of section fourteen hundred  
17 fifty-two of this article, a loan or financing lease attributed by such  
18 taxpayer to a branch without the state shall be presumed to be properly  
19 so attributed provided that such presumption may be rebutted if the tax  
20 commission demonstrates that the greater portion of income producing  
21 activity related to the loan or financing lease did not occur at such  
22 branch. Where such presumption has been rebutted, the loan or financing  
23 lease shall be presumed to be within this state if the taxpayer had a  
24 branch within this state at the time the loan or financing lease was  
25 made. The taxpayer may rebut such presumption by demonstrating that the  
26 greater portion of income producing activity related to the loan or  
27 financing lease did not occur within the state. In the case of a loan or  
28 financing lease which is recorded on the books of a place without the  
29 state which is not a branch, it shall be presumed that the greater  
30 portion of income producing activity related to such loan or financing  
31 lease occurred within this state if the taxpayer had a branch within  
32 this state at the time the loan or financing lease was made. The taxpay-  
33 er may rebut such presumption by demonstrating that the greater portion  
34 of income producing activity related to the loan or financing lease did  
35 not occur within this state.

36 (ii) In the case of a taxpayer described in paragraph six or nine of  
37 subsection (a) of section fourteen hundred fifty-two of this article, a  
38 loan or financing lease attributed by such taxpayer to a bona fide  
39 office without the state shall be presumed to be properly so attributed  
40 provided that such presumption may be rebutted if the tax commission  
41 demonstrates that the greater portion of income producing activity  
42 related to the loan or financing lease did not occur without this state.

43 (C) Receipts from lease transactions other than financing leases  
44 referred to in subparagraph (B) are located where the property subject  
45 to the lease is located.

46 (D) (i) Interest, and fees and penalties in the nature of interest,  
47 from bank, credit, travel and entertainment card receivables are earned  
48 within the state if the mailing address of the card holder in the  
49 records of the taxpayer is in the state;

50 (ii) Service charges and fees from such cards are earned within the  
51 state if the mailing address of the card holder in the records of the  
52 taxpayer is in the state; and

53 (iii) Receipts from merchant discounts are earned within the state if  
54 the merchant is located within the state.

55 (E) The portion of total net gains and other income from trading  
56 activities (including but not limited to foreign exchange, options and

1 financial futures), and from investment activities which is attributed  
2 within the state shall be ascertained by multiplying such total net  
3 gains and other income by a fraction the numerator of which is the aver-  
4 age value of trading assets and investment assets attributable to this  
5 state and the denominator of which is the average value of all trading  
6 and investment assets. A trading asset or investment asset is attribut-  
7 able to this state if the greater portion of income producing activity  
8 related to the trading asset or investment asset occurred within the  
9 state.

10 (F) Fees or charges from the issuance of letters of credit, travelers  
11 checks and money orders are earned within the state if such letters of  
12 credit, travelers checks or money orders are issued within the state.

13 (G) Rules for receipts from certain services to investment companies.  
14 (1) For taxable years beginning on or after January first, two thousand  
15 one, the portion of receipts received from an investment company arising  
16 from the sale of management, administration or distribution services to  
17 such investment company determined in accordance with clause two of this  
18 subparagraph shall be deemed to arise from services performed within the  
19 state (such portion referred to herein as the New York portion).

20 (2) The New York portion shall be the product of (i) the total of such  
21 receipts from the sale of such services and (ii) a fraction. The numera-  
22 tor of that fraction is the sum of the monthly percentages (as defined  
23 hereinafter) determined for each month of the investment company's taxa-  
24 ble year for federal income tax purposes which taxable year ends within  
25 the taxable year of the taxpayer (but excluding any month during which  
26 the investment company had no outstanding shares). The monthly percent-  
27 age for each such month is determined by dividing (i) the number of  
28 shares in the investment company which are owned on the last day of the  
29 month by shareholders which are domiciled in the state by (ii) the total  
30 number of shares in the investment company outstanding on that date. The  
31 denominator of the fraction is the number of such monthly percentages.

32 (3)(i) For purposes of this subparagraph the term "domicile", in the  
33 case of an individual shall have the meaning ascribed to it under arti-  
34 cle twenty-two of this chapter; an estate or trust is domiciled in the  
35 state if it is a resident estate or trust as defined in paragraph three  
36 of subsection (b) of section six hundred five of this chapter; a busi-  
37 ness entity is domiciled in the state if the location of the actual seat  
38 of management or control is in the state. It shall be presumed that the  
39 domicile of a shareholder, with respect to any month, is his, her or its  
40 mailing address on the records of the investment company as of the last  
41 day of such month.

42 (ii) For purposes of this subparagraph, the term "investment company"  
43 shall mean a regulated investment company, as defined in section 851 of  
44 the internal revenue code, and a partnership to which section 7704(a) of  
45 the internal revenue code applies (by virtue of section 7704(c)(3) of  
46 such code) and which meets the requirements of section 851(b) of such  
47 code. The preceding sentence shall be applied to the taxable year for  
48 federal income tax purposes of the business entity which is asserted to  
49 constitute an investment company which ends within the taxable year of  
50 the taxpayer.

51 (iii) For purposes of this subparagraph, the term "receipts from an  
52 investment company" includes amounts received directly from an invest-  
53 ment company as well as amounts received from the shareholders in such  
54 investment company, in their capacity as such.

55 (iv) For purposes of this subparagraph, the term "management services"  
56 means the rendering of investment advice to an investment company,

1 making determinations as to when sales and purchases of securities are  
2 to be made on behalf of an investment company, or the selling or  
3 purchasing of securities constituting assets of an investment company,  
4 and related activities, but only where such activity or activities are  
5 performed pursuant to a contract with the investment company entered  
6 into pursuant to section 15(a) of the federal investment company act of  
7 nineteen hundred forty, as amended.

8 (v) For purposes of this subparagraph, the term "distribution  
9 services" means the services of advertising, servicing investor accounts  
10 (including redemptions), marketing shares or selling shares of an  
11 investment company, but, in the case of advertising, servicing investor  
12 accounts (including redemptions) or marketing shares, only where such  
13 service is performed by a person who is (or was, in the case of a closed  
14 end company) also engaged in the service of selling such shares. In the  
15 case of an open end company, such service of selling shares must be  
16 performed pursuant to a contract entered into pursuant to section 15(b)  
17 of the federal investment company act of nineteen hundred forty, as  
18 amended.

19 (vi) For purposes of this subparagraph, the term "administration  
20 services" includes clerical, accounting, bookkeeping, data processing,  
21 internal auditing, legal and tax services performed for an investment  
22 company but only if the provider of such service or services during the  
23 taxable year in which such service or services are sold also sells  
24 management or distribution services, as defined in item (v) of this  
25 clause, to such investment company.

26 (H) All receipts from the performance of services not described in  
27 this clause are earned within the state if the services are performed in  
28 the state. When a service is performed both within and without the  
29 state, the receipts shall be allocated within and without the state in  
30 accordance with rules and regulations of the tax commission.

31 (I) All other receipts not described in subparagraphs (B) through (H)  
32 of this paragraph shall be attributable within and without the state in  
33 accordance with rules and regulations issued by the commissioner.

34 (3) The taxpayer shall ascertain the percentage which the average  
35 value of deposits maintained at branches within the state during the  
36 taxable year, bears to the average value of all the taxpayer's deposits  
37 maintained at branches within and without the state during the taxable  
38 year.

39 (4) Each percentage computed pursuant to this subsection shall be  
40 computed on a cash or accrual basis according to the method of account-  
41 ing used for the taxable year. The receipts percentage shall include  
42 only receipts which are included in alternative entire net income for  
43 the taxable year. The deposits and payroll percentages shall include  
44 only deposits and payroll the expenses of which are included in the  
45 computation of alternative entire net income for the taxable year.

46 (5) For purposes of this section:

47 (A) The term "bona fide office" means an office at which the taxpayer  
48 carries on its business in a regular and systematic manner and which is  
49 continuously maintained, occupied and used by employees of the taxpayer.

50 (B) The term "branch" means a bona fide office which is used by the  
51 taxpayer on a regular and systematic basis to (i) approve loans (regard-  
52 less of whether the approval of certain classes of loans requires review  
53 or final approval by another office of the taxpayer), (ii) accept loan  
54 repayments, (iii) disburse funds, and (iv) conduct one or more other  
55 functions of a banking business.



(6) If it shall appear to the tax commission that the allocation percentage determined in subsection (b), (c), or (d) of this section does not properly reflect the activity, business, income or assets of a taxpayer within the state, the tax commission shall be authorized in its 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 state.

(7) The tax commission 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 subsection.

(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 state, the portion thereof which is derived from business carried on within the state 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 subsection (a) of this section, plus, in the case of a taxpayer other than a New York S corporation, an additional percentage equal to the receipts percentage ascertained under paragraph two of such subsection and an additional percentage equal to the deposits percentage ascertained under paragraph three of such subsection, and divide the result by the number of percentages so added together.

(1-a) Notwithstanding the provisions of paragraph one of this subsection, each banking corporation described in paragraph nine of subsection (a) of section fourteen hundred fifty-two of this article subject to the tax imposed by this article that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subsection (a) of this section, shall determine the portion of its entire net income derived from business carried on within the state by multiplying such income by an income allocation percentage obtained as follows:

(A) For taxable years beginning on or after January first, two thousand six and before the first day of January, two thousand seven, by adding the following percentages:

(i) the product of seventeen percent and the percentage determined under paragraph one of subsection (a) of this section,

(ii) the product of fifty percent and the percentage determined under paragraph two of subsection (a) of this section, and

(iii) the product of thirty-three percent and the percentage determined under paragraph three of subsection (a) of this section.

(B) For taxable years beginning on or after January first, two thousand seven and before the first day of January, two thousand eight, by adding the following percentages:

(i) the product of ten percent and the percentage determined under paragraph one of subsection (a) of this section,

(ii) the product of seventy percent and the percentage determined under paragraph two of subsection (a) of this section, and

(iii) the product of twenty percent and the percentage determined under paragraph three of subsection (a) of this section.

(C) For taxable years beginning on or after January first, two thousand eight, by the percentage ascertained under paragraph two of subsection (a) of this section.

(2) (A) In lieu of the modification provided for in subsection (f) of section fourteen hundred fifty-three of this article, (relating to a

1 modification for the adjusted eligible net income of an international  
2 banking facility), a taxpayer may, in the manner prescribed by the tax  
3 commission, elect to modify on an annual basis its income allocation  
4 percentage in the manner described in clauses (i), (ii) and (iii) of  
5 this subparagraph:

6 (i) wages, salaries and other personal service compensation properly  
7 attributable to the production of eligible gross income of the tax-  
8 payer's international banking facility shall not be included in the  
9 computation of wages, salaries and other personal service compensation  
10 of employees within the state.

11 (ii) receipts properly attributable to the production of eligible  
12 gross income of the taxpayer's international banking facility shall not  
13 be included in the computation of receipts within the state, and

14 (iii) deposits from foreign persons which are properly attributable to  
15 the production of eligible gross income of the taxpayer's international  
16 banking facility shall not be included in the computation of deposits  
17 maintained at branches within the state.

18 (B) For purposes of this paragraph, the term "eligible gross income"  
19 refers to such term as set out in subsection (f) of section fourteen  
20 hundred fifty-three of this article except that the term "foreign  
21 person" as defined in paragraph eight of such subsection (f) shall not  
22 include a foreign branch of the taxpayer and in no event shall trans-  
23 actions between the taxpayer's international banking facility and its  
24 foreign branches be considered.

25 (c) Allocation of alternative entire net income. If a taxpayer's  
26 alternative entire net income is derived from business carried on both  
27 within and without the state, the portion thereof which is derived from  
28 business carried on within the state shall be determined by multiplying  
29 its alternative entire net income by the alternative entire net income  
30 allocation percentage determined as follows:

31 (1) Recompute the payroll percentage under paragraph one of subsection  
32 (a) of this section without giving consideration to the phrase "eighty  
33 percent of," add to the resulting percentage the percentages ascertained  
34 under paragraphs two and three of such subsection, and divide the result  
35 by the number of percentages so added together.

36 (2) When an election has been made pursuant to paragraph two of  
37 subsection (b) of this section (relating to international banking facil-  
38 ities) the taxpayer shall make the modifications described in such para-  
39 graph for purposes of its alternative entire net income allocation  
40 percentage.

41 (3) For taxable years beginning on or after January first, two thou-  
42 sand six, each banking corporation described in paragraph nine of  
43 subsection (a) of section fourteen hundred fifty-two of this article  
44 subject to the tax imposed by this article that substantially provides  
45 management, administrative or distribution services to an investment  
46 company, as such terms are defined in subparagraph (G) of paragraph two  
47 of subsection (a) of this section, shall determine the portion of its  
48 alternative entire net income derived from business carried on within  
49 the state by multiplying such income by the percentage ascertained for  
50 the taxable year under paragraph one-a of subsection (b) of this  
51 section, except that in computing such percentage (A) for taxable years  
52 beginning before January first, two thousand eight, no consideration  
53 shall be given to the phrase "eighty percent of" in paragraph one of  
54 subsection (a) of this section, (B) for taxable years beginning before  
55 January first, two thousand eight, when an election has been made pursu-  
56 ant to paragraph two of subsection (b) of this section (relating to an

1 international banking facility) the taxpayer shall make the modifica-  
2 tions described in such paragraph, and (C) for taxable years beginning  
3 on or after January first, two thousand eight, when an election has been  
4 made pursuant to paragraph two of subsection (b) of this section (relat-  
5 ing to an international banking facility) the taxpayer shall make the  
6 modifications described in clause (ii) of subparagraph (A) of such para-  
7 graph.

8 (d) Allocation of taxable assets. If the taxpayer's taxable assets are  
9 derived from business carried on both within and without the state, the  
10 portion thereof which is derived from business carried on within the  
11 state shall be determined by multiplying its taxable assets by an asset  
12 allocation percentage determined in the same manner as the income allo-  
13 cation percentage under subsection (b) of this section, determined as if  
14 the election provided for in paragraph two of such subsection has been  
15 made, except that the modifications described in clauses (i), (ii) and  
16 (iii) of subparagraph (A) of such paragraph shall not be made.

17 § 1455. Computation of tax. The tax imposed by section fourteen  
18 hundred fifty-one of this article shall be, in the case of each taxpayer  
19 other than a New York S corporation, the greater of the following compu-  
20 tations:

21 (a) Basic tax. For taxable years beginning before July first, two  
22 thousand, nine percent of the taxpayer's entire net income, or the  
23 portion thereof allocated to this state, for the taxable year, or part  
24 thereof. For taxable years beginning after June thirtieth, two thousand  
25 and before July first, two thousand one, eight and one-half percent of  
26 the taxpayer's entire net income, or portion thereof allocated to this  
27 state, for the taxable year, or part thereof. For taxable years begin-  
28 ning after June thirtieth, two thousand one and before July first, two  
29 thousand two, eight percent of the taxpayer's entire net income, or  
30 portion thereof allocated to this state, for the taxable year, or part  
31 thereof. For taxable years beginning after June thirtieth, two thousand  
32 two and before January first, two thousand seven, seven and one-half  
33 percent of the taxpayer's entire net income, or portion thereof allo-  
34 cated to this state, for the taxable year, or part thereof. For taxable  
35 years beginning on or after January first, two thousand seven, seven and  
36 one-tenth percent of the taxpayer's entire net income, or the portion  
37 thereof allocated to this state, for the taxable year, or part thereof.

38 (b) Alternative minimum tax. If the tax under subsection (a) of this  
39 section is less than any of the following amounts, the tax shall be the  
40 larger of the following amounts:

41 (1) (i) Except in the case of a taxpayer described in clause (ii),  
42 (iii), or (iv) of this paragraph, one-tenth of a mill upon each dollar  
43 of taxable assets, or the portion thereof allocated to this state.

44 (ii) In the case of a taxpayer whose net worth ratio is less than five  
45 but greater than or equal to four percent and whose total assets are  
46 comprised of thirty-three percent or more of mortgages, one-twenty-fifth  
47 of a mill upon each dollar of taxable assets, or the portion thereof  
48 allocated to this state.

49 (iii) In the case of a taxpayer whose net worth ratio is less than  
50 four percent and whose total assets are comprised of thirty-three  
51 percent or more of mortgages, one-fiftieth of a mill upon each dollar of  
52 taxable assets, or the portion thereof allocated to this state.

53 (iv) For taxable years beginning on or after January first, nineteen  
54 hundred eighty-five, a taxpayer (whether or not a qualified institution  
55 as defined in subparagraph (B) of paragraph five of subsection (f) of  
56 section four hundred six of the federal national housing act, as

1 amended, or as defined in paragraph two of subsection (i) of section  
2 thirteen of the federal deposit insurance act, as amended) shall not be  
3 subject to the provisions of this paragraph for that portion of the  
4 taxable year in which it had outstanding net worth certificates issued  
5 in accordance with paragraph five of subsection (f) of section four  
6 hundred six of the federal national housing act, as amended, or issued  
7 in accordance with subsection (i) of section thirteen of the federal  
8 deposit insurance act, as amended.

9 (v) For the purposes of this article:

10 (A) The term "taxable assets" shall mean the average value of total  
11 assets reduced by any amount of money or other property received from or  
12 attributable to amounts received from the federal deposit insurance  
13 corporation pursuant to subsection (c) of section thirteen of the feder-  
14 al deposit insurance act, as amended, or the federal savings and loan  
15 insurance corporation pursuant to paragraph one, two, three or four of  
16 subsection (f) of section four hundred six of the federal national hous-  
17 ing act, as amended. Total assets are those assets which are properly  
18 reflected on a balance sheet the income or expenses of which are proper-  
19 ly reflected (or would have been properly reflected if not fully depre-  
20 ciated or expensed or depreciated or expensed to a nominal amount) in  
21 the computation of alternative entire net income for the taxable year or  
22 in the computation of the eligible net income of the taxpayer's interna-  
23 tional banking facility for the taxable year.

24 (B) The term "net worth ratio" shall mean the percentage of net worth  
25 to assets on the last day of the taxable year. The term "net worth"  
26 means the sum of preferred stock, common stock, surplus, capital  
27 reserves, undivided profits, mutual capital certificates, reserve for  
28 contingencies, reserve for loan losses and reserve for security losses  
29 minus assets classified loss. The term "assets" means the sum of mort-  
30 gage loans, nonmortgage loans, repossessed assets, real estate held for  
31 development or investment or resale, cash, deposits, investment securi-  
32 ties, fixed assets and other assets (such as financial futures, goodwill  
33 and other intangible assets) minus assets classified loss. In no event  
34 shall assets be reduced by reserves for losses.

35 (C) The term "mortgages" shall mean loans secured by real property  
36 within or without the state, participations in and securities collater-  
37 alized by pools of residential mortgages, whether or not issued or guar-  
38 anteed by a United States government agency, and loans secured by stock  
39 in a cooperative housing corporation. The percentage of total assets  
40 comprised of mortgages shall be an amount equal to the ratio of the  
41 average of the four quarterly balances of such mortgages ending within  
42 the taxable year, to the average of the four quarterly balances of all  
43 assets ending within the taxable year. Such quarterly balances shall be  
44 computed in the same manner as the report of condition required for  
45 federal deposit insurance corporation or federal savings and loan insur-  
46 ance corporation purposes, whether or not such report is required. For  
47 taxable periods of less than one year, the taxpayer shall compute such  
48 ratio using the number of such quarterly balances ending within such  
49 taxable period.

50 (2) Three percent of the taxpayer's alternative entire net income, or  
51 portion thereof allocated to this state, for the taxable year, or part  
52 thereof.

53 (3) Two hundred fifty dollars.

54 (c) New York S corporations. (1) General. In the case of a New York S  
55 corporation, the tax imposed by section fourteen hundred fifty-one of  
56 this article shall be the higher of (i) the amount prescribed in

1 subsection (a) of this section reduced by the article twenty-two tax  
2 equivalent or (ii) the amount prescribed in paragraph three of  
3 subsection (b) of this section.

4 (2) The article twenty-two tax equivalent is the amount computed under  
5 subsection (a) of this section by substituting for the rate therein the  
6 rate of 7.875 percent.

7 (3) Termination year. In the case of a termination year, the tax for  
8 the S short year shall be computed under paragraph one of this  
9 subsection without regard to the amount prescribed in paragraph three of  
10 subsection (b) of this section, and the tax for the C short year shall  
11 be the larger of the taxes computed under subsection (a) of this section  
12 or paragraph one or two of subsection (b) of this section, but in no  
13 event shall the sum of the tax for the S short year and the tax for the  
14 C short year be less than the tax prescribed in paragraph three of  
15 subsection (b) of this section.

16 § 1455-A. Tax surcharge. (a) In addition to the tax imposed under  
17 section fourteen hundred fifty-one of this article, there is hereby  
18 imposed, (1) for taxable years ending after June thirtieth, nineteen  
19 hundred eighty-nine and before July first, nineteen hundred ninety, a  
20 tax surcharge at the rate of two and one-half percent of the tax imposed  
21 under section fourteen hundred fifty-one of this article, before  
22 deduction of any credits against tax otherwise allowable under this  
23 article for all or any parts of such taxable years, (2) for taxable  
24 years ending after June thirtieth, nineteen hundred ninety and before  
25 July first, nineteen hundred ninety-four, and until such rate is super-  
26 seded, a tax surcharge at the rate of fifteen percent of the tax imposed  
27 under section fourteen hundred fifty-one of this article, after  
28 deduction of any credits against tax otherwise allowable under this  
29 article, (3) for taxable years ending after June thirtieth, nineteen  
30 hundred ninety-four and before July first, nineteen hundred ninety-five,  
31 and until such rate is superseded, a tax surcharge at the rate of ten  
32 percent of the tax imposed under section fourteen hundred fifty-one of  
33 this article, after deduction of any credits against the tax otherwise  
34 allowable under this article, (4) for taxable years ending after June  
35 thirtieth, nineteen hundred ninety-five and before July first, nineteen  
36 hundred ninety-six, and until such rate is superseded, a tax surcharge  
37 at the rate of five percent of the tax imposed under section fourteen  
38 hundred fifty-one of this article, after deduction of any credits  
39 against the tax otherwise allowable under this article and (5) for taxa-  
40 ble years ending after June thirtieth, nineteen hundred ninety-six and  
41 before July first, nineteen hundred ninety-seven, a tax surcharge at the  
42 rate of zero percent of the tax imposed under section fourteen hundred  
43 fifty-one of this article, after deduction of any credits against the  
44 tax otherwise allowable under this article. However, the tax surcharge  
45 imposed by this section at the rate of two and one-half percent shall  
46 not be imposed upon any taxpayer for more than twelve months, the tax  
47 surcharge imposed by this section at the rate of fifteen percent shall  
48 not be imposed upon any taxpayer for more than forty-eight months, and  
49 the tax surcharges imposed by this section at the rates of ten percent,  
50 five percent and zero percent shall not, respectively, be imposed upon  
51 any taxpayer for more than twelve months, and the commissioner shall  
52 prescribe by regulation or instructions a method of proration designed  
53 to effectuate such result. The credits against tax otherwise allowable  
54 under section fourteen hundred fifty-six of this article shall not be  
55 allowed as a credit against the tax surcharge imposed by this section.



(b) (1) The provisions concerning returns under section fourteen hundred sixty-two of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the taxes imposed by this article, such automatic extension shall be allowed, for taxable years to which the tax surcharge imposed by this section apply, only if a taxpayer files with the commissioner an application for extension in such form as the commissioner may prescribe and pays on or before the date of such filing in addition to any other amounts required under this article, two and one-half percent, fifteen percent, ten percent, five percent or zero percent, whichever is the rate applicable to the taxable year pursuant to subsection (a) of this section, of the amount properly estimated as provided in subsection (b) of section fourteen hundred sixty-three of this article as its tax payable under section fourteen hundred fifty-one of this article, before deduction of any credits against tax otherwise allowable under section fourteen hundred fifty-six of this article in the case of the tax surcharge imposed at the rate of two and one-half percent, and after deduction of any credits against tax otherwise allowable under section fourteen hundred fifty-six of this article in the case of the tax surcharge imposed at the rate of fifteen, ten, five or zero percent. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed.

(2) Except as otherwise provided in this section, all of the provisions of this article, except for section fourteen hundred fifty-five-B of this article, presently applicable are applicable to the tax surcharge imposed by this section with such modifications as may be necessary to adapt such language to the tax surcharge imposed by this section. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax surcharge imposed by this section and to that end a reference in this article to the tax imposed by section fourteen hundred fifty-one of this article shall be read as a reference to the tax surcharge imposed by this section, and to the sum of such tax and such tax surcharge in the case of sections fourteen hundred sixty and fourteen hundred sixty-one of this article and such other provisions requiring such reading in order to effectuate the purposes of this provision, unless a different meaning is clearly required.

(c) Coordination with section fourteen hundred fifty-five-B of this article. The amount of tax surcharge imposed pursuant to this section shall not be included in any calculation of a tax surcharge imposed pursuant to section fourteen hundred fifty-five-B of this article.

(d) Insofar as subsection (a) of this section establishes a rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four and until such rate is superseded, a rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five and until such rate is superseded, a rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six and until such rate is superseded, and a rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, the transition from such rate of

1 fifteen percent to such rate of ten percent, from such rate of ten  
2 percent to such rate of five percent, and from such rate of five percent  
3 to such rate of zero percent, shall be deemed to occur, respectively, on  
4 the first day of the seventh month of each of such taxable years, with  
5 the result that for purposes of implementation of such changes in rates,  
6 and notwithstanding such subsection (a), there is hereby imposed with  
7 respect to all taxable years ending after June thirtieth, nineteen  
8 hundred ninety-four and before July first, nineteen hundred ninety-five,  
9 including taxable years of fewer than twelve months, a tax surcharge at  
10 the rate of twelve and one-half percent; there is hereby imposed with  
11 respect to all taxable years ending after June thirtieth, nineteen  
12 hundred ninety-five and before July first, nineteen hundred ninety-six,  
13 including taxable years of fewer than twelve months, a tax surcharge at  
14 the rate of seven and one-half percent; and there is hereby imposed with  
15 respect to all taxable years ending after June thirtieth, nineteen  
16 hundred ninety-six and before July first, nineteen hundred ninety-seven,  
17 including taxable years of fewer than twelve months, a tax surcharge at  
18 the rate of two and one-half percent. In addition, for purposes of  
19 implementation of all the provisions of this section references to ten  
20 percent shall be read as references to twelve and one-half percent,  
21 references to five percent shall be read as references to seven and  
22 one-half percent and references to zero percent shall be read as refer-  
23 ences to two and one-half percent.

24 § 1455-B. Temporary metropolitan transportation business tax surcharge  
25 on banks. (a) For the privilege of exercising its franchise or doing  
26 business in the metropolitan commuter transportation district in a  
27 corporate or organized capacity, there is hereby imposed on every  
28 taxpayer subject to tax under this article, other than a New York S  
29 corporation, for the taxable years commencing on or after January first,  
30 nineteen hundred eighty-two but ending before December thirty-first, two  
31 thousand twenty-three, a tax surcharge, in addition to the tax imposed  
32 under section fourteen hundred fifty-one of this article, at the rate of  
33 eighteen percent of the tax imposed under such section fourteen hundred  
34 fifty-one of this article, for such taxable years or any part of such  
35 taxable years ending before December thirty-first, nineteen hundred  
36 eighty-three after the deduction of any credits otherwise allowable  
37 under this article, and at the rate of seventeen percent of the tax  
38 imposed under such section for such taxable years or any part of such  
39 taxable years ending on or after December thirty-first, nineteen hundred  
40 eighty-three after the deduction of any credits otherwise allowable  
41 under this article; provided however, that such rates of tax surcharge  
42 shall be applied only to that portion of the tax imposed under section  
43 fourteen hundred fifty-one of this article after the deduction of any  
44 credits otherwise allowable under this article which is attributable to  
45 the taxpayer's business activity carried on within the metropolitan  
46 commuter transportation district; and provided, further, that the tax  
47 surcharge imposed by this section shall not be imposed upon any taxpayer  
48 for more than four hundred thirty-two months. Provided however, that for  
49 taxable years commencing on or after July first, two thousand, such  
50 surcharge shall be calculated as if the rate of the basic tax computed  
51 under subsection (a) of section fourteen hundred fifty-five of this  
52 article was nine percent.

53 (b) If the tax imposed under section fourteen hundred fifty-one of  
54 this article is derived from business activity carried on both within  
55 and without the metropolitan commuter transportation district, the  
56 portion of the tax attributable to business activity carried on in the

1 metropolitan commuter transportation district shall be determined in  
2 accordance with rules and regulations promulgated by the tax commission.

3 (c) The provisions concerning returns under section fourteen hundred  
4 sixty-two of this article shall be applicable to this section, except  
5 that for purposes of an automatic extension for six months for filing a  
6 return covering the tax surcharge imposed by this section, such automat-  
7 ic extension shall be allowed only if a taxpayer files with the commis-  
8 sioner an application for extension in such form as said commissioner  
9 may prescribe by regulation and pays on or before the date of such  
10 filing in addition to any other amounts required under this article,  
11 either ninety percent of the entire tax surcharge required to be paid  
12 under this section for the applicable period, or not less than the tax  
13 surcharge shown on the taxpayer's return for the preceding taxable year,  
14 if such preceding taxable year was a taxable year of twelve months. The  
15 tax surcharge imposed by this section shall be payable to the commis-  
16 sioner in full at the time the return is required to be filed, and such  
17 tax surcharge or the balance thereof, imposed on any taxpayer which  
18 ceases to exercise its franchise or be subject to the tax surcharge  
19 imposed by this section shall be payable to the commissioner at the time  
20 the return is required to be filed, provided such tax surcharge of a  
21 domestic corporation which continues to possess its franchise shall be  
22 subject to adjustment as the circumstances may require; all other tax  
23 surcharges of any such taxpayer, which pursuant to the foregoing  
24 provisions of this section would otherwise be payable subsequent to the  
25 time such return is required to be filed, shall nevertheless be payable  
26 at such time. All of the provisions of this article presently applicable  
27 are applicable to the tax surcharge imposed by this section.

28 (d) Notwithstanding any contrary provisions of state or local law, the  
29 tax surcharge imposed under this section shall not be allowed as a  
30 deduction in the computation of any state or local tax imposed under  
31 this chapter or any chapter or local law. Furthermore, the credits  
32 otherwise allowable under this article shall not be allowed against the  
33 tax surcharge imposed by this section.

34 (e) The term metropolitan commuter transportation district as used in  
35 this section shall be defined pursuant to section twelve hundred sixty-  
36 two of the public authorities law.

37 § 1456. Credits. (a) Credit for servicing certain mortgages. Every  
38 bank, as defined in section two thousand four hundred two of the public  
39 authorities law, which shall have entered into a contract with the state  
40 of New York mortgage agency to service mortgages acquired by such agency  
41 pursuant to the state of New York mortgage agency act, shall have cred-  
42 ited to it annually to apply upon or in lieu of the payment of any tax  
43 to which it may be subject under this article an amount equal to two and  
44 ninety-three one hundredths percentum of the total principal and inter-  
45 est collected by the bank during its taxable year on each such mortgage  
46 secured by a lien on real estate improved by a one-family to four-family  
47 residential structure and an amount equal to the interest collected by  
48 the bank during its taxable year on each such mortgage secured by a lien  
49 on real property improved by a structure occupied as the residence of  
50 five or more families living independently of each other, multiplied by  
51 a fraction the denominator of which shall be the interest rate payable  
52 on the mortgage (computed to five decimal places) and the numerator of  
53 which shall be .00125 in the case of such a mortgage acquired by such  
54 agency for less than one million dollars, and .00100 in the case of such  
55 a mortgage acquired by such agency for one million dollars or more;  
56 provided, however, that there shall in no case be credited to any such

1 bank an amount in excess of the amount due from such bank for taxes  
2 payable to the state under this article for the taxable year for which  
3 such credit is given. In computing such tax credit for the servicing of  
4 mortgages on one-family to four-family residential structures, the bank  
5 shall be entitled to no credit for the collection of curtailments or  
6 payments in discharge of any such mortgage. For the purposes of this  
7 section, (1) a "curtailment" shall mean amounts paid by mortgagors (i)  
8 in excess of the monthly constant due during the month of collection and  
9 (ii) in reduction of the unpaid principal balance of the mortgage; in  
10 the absence of clear evidence to the contrary, amounts paid in excess of  
11 the monthly constant due during the month of collection shall be deemed  
12 to be in reduction of the unpaid principal balance of the mortgage; and  
13 (2) "monthly constant" shall mean the amount of principal and interest  
14 which is due and payable according to the mortgage documents on each  
15 periodic payment date.

16 (b) Eligible business facility credit.

17 (1) On or after April first, nineteen hundred eighty-three, for taxa-  
18 ble years beginning before January first, two thousand, a credit against  
19 the tax imposed by this article shall be allowed only to a taxpayer  
20 owning or operating an eligible business facility, where such taxpayer  
21 has received a certificate of eligibility for tax credits, or a renewal  
22 or extension thereof, for such facility from the New York state job  
23 incentive board prior to April first, nineteen hundred eighty-three, or  
24 has received a certificate of eligibility for tax credits, or a renewal  
25 or extension thereof, for such facility from the state tax commission  
26 subsequent to such date pursuant to paragraph eight of this subsection,  
27 and only with respect to such facility, to be computed as hereinafter  
28 provided.

29 (2) The amount of the credit allowable in any taxable year shall be  
30 the sum determined by multiplying the tax otherwise due by a percentage  
31 to be determined by:

32 (A) ascertaining the percentage which the total of eligible property  
33 values during the period covered by its return, as defined in paragraph  
34 four of this subsection, bears to the average value of all the taxpay-  
35 er's real and tangible personal property except for inventory within the  
36 state during such period. For the purposes of this subparagraph only,  
37 the taxpayer's real and tangible personal property shall include not  
38 only such property owned by the taxpayer but also property rented to it,  
39 and the value of rented property shall be deemed to be eight times the  
40 net annual rental rate, that is, the annual rental rate paid by the  
41 taxpayer less any annual rental rate received by the taxpayer from  
42 subrentals;

43 (B) ascertaining the percentage which the total wages, salaries and  
44 other personal service compensation during such period, of employees,  
45 except general executive officers and that portion of employee's wages,  
46 salaries and other personal service compensation attributable, directly  
47 or indirectly, to the production of adjusted eligible net income which  
48 is allowed as a deduction from entire net income as set forth in  
49 subsection (f) of section fourteen hundred fifty-three of this article,  
50 serving in jobs created or retained in an eligible area (as the term  
51 "eligible area" was defined by section one hundred fifteen of the  
52 commerce law as it existed on March thirty-first, nineteen hundred  
53 eighty-three) by such business facility, bears to the total wages, sala-  
54 ries and other personal service compensation, during such period, of all  
55 the taxpayer's employees within the state, except general executive  
56 officers; and

1 (C) adding together the percentages so determined and dividing the  
2 result by two; provided, however, that if no wages, salaries or other  
3 personal service compensation were paid or incurred by the taxpayer  
4 during such period to employees within the state other than general  
5 executive officers, subparagraph (B) of this paragraph shall be disre-  
6 garded and the amount of credit allowable shall be determined by multi-  
7 plying the tax otherwise due by the percentage specified in subparagraph  
8 (A) of this paragraph.

9 (3) In no event shall the credit herein provided for be allowed in any  
10 amount which will reduce the tax payable to less than the dollar amount  
11 fixed as a minimum tax by subsection (b) of section fourteen hundred  
12 fifty-five of this article.

13 (4) (A) Eligible property values, for the purposes of this subsection,  
14 shall include such part of the value of depreciable real and tangible  
15 personal property included in an eligible business facility as repres-  
16 ents:

17 (i) expenditures paid or incurred by the taxpayer for capital improve-  
18 ments consisting of the construction, reconstruction, erection or  
19 improvement of real property included in an eligible facility, which  
20 construction, reconstruction, erection or improvements were commenced on  
21 or after July first, nineteen hundred sixty-eight;

22 (ii) in the case of real property leased by the taxpayer from another  
23 party, eight times the portion of the net annual rental rate attribut-  
24 able to such construction, reconstruction, erection or improvement  
25 commenced on or after July first, nineteen hundred sixty-eight;

26 (iii) expenditures paid or incurred by the taxpayer for the purchase  
27 of tangible personal property, other than vehicles, included in an  
28 eligible business facility, provided such property was purchased on or  
29 after July first, nineteen hundred sixty-eight; and

30 (iv) in the case of tangible personal property, other than vehicles,  
31 leased by the taxpayer from another party and included in an eligible  
32 business facility, eight times the net annual rental rate, provided the  
33 period for which such property was leased by the taxpayer began on or  
34 after July first, nineteen hundred sixty-eight.

35 (B) Provided, however, eligible property values for purposes of this  
36 subdivision shall not include expenditures paid or incurred more than  
37 one year prior to the filing of an application for a certificate of  
38 eligibility pursuant to section one hundred nineteen of the commerce  
39 law, as such section existed on March thirty-first, nineteen hundred  
40 eighty-three.

41 (C) Provided further that, for purposes of this subsection, eligible  
42 property values shall not include that portion of the value of property  
43 which is used in the production of adjusted eligible net income which is  
44 allowed as a deduction from entire net income as set forth in subsection  
45 (f) of section fourteen hundred fifty-three of this article.

46 (5) The total of all credits allowed pursuant to this subsection in  
47 any taxable year or years with reference to any eligible business facil-  
48 ity shall not exceed the total eligible property values included.

49 (6) If a credit is allowed for any taxable year as herein provided on  
50 the basis of a certificate of eligibility, and if such certificate is  
51 revoked or modified, the taxpayer shall report such revocation or  
52 modification in its return for the taxable year during which it occurs,  
53 and the tax commission shall recompute such credit and may assess any  
54 additional tax resulting from such recomputation within the time fixed  
55 by paragraph nine of subsection (c) of section ten hundred eighty-three  
56 of this chapter.



1 (7) If a business facility owned or operated by a taxpayer shall be an  
2 eligible business facility for only part of a taxable year, the credit  
3 allowed by this subdivision shall be prorated according to the period  
4 such facility was an eligible business facility, and if the total of the  
5 eligible property values shall have changed during any taxable year, a  
6 pro-rata adjustment shall be made in computing such credit.

7 (8) The state tax commission shall be empowered, on or after April  
8 first, nineteen hundred eighty-three, to issue a certificate of eligi-  
9 bility for tax credits to a taxpayer for an eligible business facility  
10 with regard to which such taxpayer has, prior to July first, nineteen  
11 hundred eighty-three, received from the New York state job incentive  
12 board initial approval of an application for such certificate by such  
13 board as evidenced by the minutes of the meeting of the board at which  
14 such application was approved, or a letter of intent authorized by  
15 section 102.4 of part one hundred two of title five of the codes, rules  
16 and regulations of the state of New York regarding such certificate of  
17 eligibility and to renew, extend, revoke or modify a certificate of  
18 eligibility for tax credits, pursuant to section one hundred twenty of  
19 the commerce law as such section existed on March thirty-first, nineteen  
20 hundred eighty-three.

21 (9) For purposes of the requirement for eligibility for the credit  
22 allowed under this subdivision that a business facility create or retain  
23 not less than five jobs as provided in subdivision (c) of section one  
24 hundred eighteen of the commerce law as such section existed on March  
25 thirty-first, nineteen hundred eighty-three, a business facility shall  
26 have (i) created not less than five jobs only if the number of jobs for  
27 the taxable year exceeds the number of jobs at the time of the commence-  
28 ment of the project as stated on its application for initial approval by  
29 five or more; or (ii) retained not less than five jobs only if initial  
30 approval was based on the retention of five or more jobs and (A) the  
31 number of jobs for the taxable year is at least equal to the number of  
32 jobs at the time of the commencement of the project as stated on its  
33 application for initial approval or (B) where initial approval was based  
34 on the retention of fewer jobs than the number of jobs at the time of  
35 the commencement of the project as stated on its application for initial  
36 approval, the number of jobs for the taxable year is at least equal to  
37 the number approved for retention. For purposes of this paragraph, the  
38 phrase "initial approval was based on the retention of five or more  
39 jobs" shall mean that such initial approval was given by the job incen-  
40 tive board to an applicant that had not stated in its application for  
41 initial approval that it would increase the number of jobs at its facil-  
42 ity by at least five.

43 (c) Mortgage recording tax credit. (1) A taxpayer shall be allowed a  
44 credit, to be credited against the tax imposed by this article. The  
45 amount of the credit shall be the amount of the special additional mort-  
46 gage recording tax paid by the taxpayer pursuant to the provisions of  
47 subdivision one-a of section two hundred fifty-three of this chapter on  
48 mortgages recorded on and after January first, nineteen hundred seven-  
49 ty-nine. Provided, however, no credit shall be allowed with respect to a  
50 mortgage of real property principally improved or to be improved by one  
51 or more structures containing in the aggregate not more than six resi-  
52 dential dwelling units, each dwelling unit having its own separate cook-  
53 ing facilities, where the real property is located in one or more of the  
54 counties comprising the metropolitan commuter transportation district  
55 and where the mortgage is recorded on or after May first, nineteen  
56 hundred eighty-seven. Provided, however, no credit shall be allowed with

1 respect to a mortgage of real property principally improved or to be  
2 improved by one or more structures containing in the aggregate not more  
3 than six residential dwelling units, each dwelling unit having its own  
4 separate cooking facilities, where the real property is located in the  
5 county of Erie and where the mortgage is recorded on or after May first,  
6 nineteen hundred eighty-seven.

7 (2) In no event shall the credit herein provided for, and carryovers  
8 of such credit, in the aggregate, be allowed in an amount which will  
9 reduce the tax payable to less than the dollar amount fixed as a minimum  
10 tax by subsection (b) of section fourteen hundred fifty-five of this  
11 article. However, if the amount of credit or carryovers of such credit,  
12 or both, allowable under this subdivision for any taxable year reduces  
13 the tax to such amount, any amount of credit or carryovers of such cred-  
14 it thus not deductible in such taxable year may be carried over to the  
15 following year or years and may be deducted from the taxpayer's tax for  
16 such year or years.

17 (d) Empire zone capital credit.

18 (1) A taxpayer shall be allowed a credit against the tax imposed by  
19 this article. The amount of the credit shall be equal to twenty-five  
20 percent of the sum of the following investments and contributions made  
21 during the taxable year and certified by the commissioner of economic  
22 development: (A) for taxable years beginning before January first, two  
23 thousand five, qualified investments made in, or contributions in the  
24 form of donations made to, one or more empire zone capital corporations  
25 established pursuant to section nine hundred sixty-four of the general  
26 municipal law prior to January first, two thousand five, (B) qualified  
27 investments in certified zone businesses which during the twelve month  
28 period immediately preceding the month in which such investment is made  
29 employed full-time within the state an average number of individuals,  
30 excluding general executive officers, of two hundred fifty or fewer,  
31 computed pursuant to the provisions of subparagraph (C) of paragraph two  
32 of subsection (e) of this section, except for investments made by or on  
33 behalf of an owner of the business, including, but not limited to, a  
34 stockholder, partner or sole proprietor, or any related person, as  
35 defined in subparagraph (C) of paragraph three of subsection (b) of  
36 section four hundred sixty-five of the internal revenue code, and (C)  
37 contributions of money to community development projects as defined in  
38 regulations promulgated by the commissioner of economic development.  
39 "Qualified investments" means the contribution of property to a corpo-  
40 ration in exchange for original issue capital stock or other ownership  
41 interest, the contribution of property to a partnership in exchange for  
42 an interest in the partnership, and similar contributions in the case of  
43 a business entity not in corporate or partnership form in exchange for  
44 an ownership interest in such entity. The total amount of credit allow-  
45 able to a taxpayer under this provision for all years, taken in the  
46 aggregate, shall not exceed three hundred thousand dollars, and shall  
47 not exceed one hundred thousand dollars with respect to the investments  
48 and contributions described in each of subparagraphs (A), (B) and (C) of  
49 this paragraph.

50 (2) The credit and carryover of such credit allowed under this  
51 subsection for any taxable year shall not, in the aggregate, reduce the  
52 tax due for such year to less than the minimum tax fixed by subsection  
53 (b) of section fourteen hundred fifty-five of this article. However, if  
54 the amount of credit or carryovers of such credit, or both, allowed  
55 under this subsection for any taxable year reduces the tax to such  
56 amount, or if any part of the credit or carryovers of such credit may

1 not be deducted from the tax otherwise due by reason of the final  
2 sentence of this paragraph, any amount of credit or carryovers of such  
3 credit thus not deductible in such taxable year may be carried over to  
4 the following year or years and may be deducted from the tax for such  
5 year or years. In addition, the amount of such credit, and carryovers of  
6 such credit to the taxable year, deducted from the tax otherwise due may  
7 not, in the aggregate, exceed fifty percent of the tax imposed under  
8 section fourteen hundred fifty-five of this article computed without  
9 regard to any credit provided for under this article.

10 (2-a) Any carryover of a credit from prior taxable years will not be  
11 allowed to an empire zone enterprise which is the basis of the credit,  
12 if an empire zone retention certificate is not issued to such entity  
13 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
14 general municipal law.

15 (3) Where the stock, partnership interest or other ownership interest  
16 arising from a qualified investment as described in subparagraphs (A)  
17 and (B) of paragraph one of this subsection is disposed of, the taxpay-  
18 er's entire net income shall be computed, pursuant to regulations  
19 promulgated by the commissioner, so as to properly reflect the reduced  
20 cost thereof arising from the application of the credit provided for  
21 herein.

22 (4)(A) Where a taxpayer sells, transfers or otherwise disposes of  
23 corporate stock, a partnership interest or other ownership interest  
24 arising from the making of a qualified investment which was the basis,  
25 in whole or in part, for the allowance of the credit provided for under  
26 this subsection, or where a contribution or investment which was the  
27 basis for such allowance is in any manner, in whole or in part, recov-  
28 ered by such taxpayer, and such disposition or recovery occurs during  
29 the taxable year or within thirty-six months from the close of the tax-  
30 able year with respect to which such credit is allowed, subparagraph (B)  
31 of this paragraph shall apply.

32 (B) The taxpayer shall add back with respect to the taxable year in  
33 which the disposition or recovery described in subparagraph (A) of this  
34 paragraph occurred the required portion of the credit originally  
35 allowed.

36 (C) The required portion of the credit originally allowed shall be the  
37 product of (i) the portion of such credit attributable to the property  
38 disposed of or the payment or contribution recovered and (ii) the appli-  
39 cable percentage.

40 (D) The applicable percentage shall be:

41 (i) one hundred percent, if the disposition or recovery occurs within  
42 the taxable year with respect to which the credit is allowed or within  
43 twelve months of the end of such taxable year,

44 (ii) sixty-seven percent, if the disposition or recovery occurs more  
45 than twelve but not more than twenty-four months after the end of the  
46 taxable year with respect to which the credit is allowed, or

47 (iii) thirty-three percent, if the disposition or recovery occurs more  
48 than twenty-four but not more than thirty-six months after the end of  
49 the taxable year with respect to which the credit is allowed.

50 (5) If the designation of an area as an empire zone is no longer in  
51 effect because the designations of all empire zones pursuant to article  
52 eighteen-B of the general municipal law have expired, a taxpayer that  
53 has made a contribution of money on or before the day immediately  
54 preceding the day the empire zones expired to a community development  
55 project approved by the commissioner of economic development shall be  
56 deemed eligible to claim the empire zone capital credit under subpara-

1 graph (C) of paragraph one of this subsection for additional contrib-  
2 utions made prior to April first, two thousand fourteen and certified by  
3 the commissioner of economic development to that community development  
4 project as payment of a commitment made by the taxpayer to that communi-  
5 ty development project before the empire zones expired.

6 (e) Empire zone wage tax credit. (1) A taxpayer shall be allowed a  
7 credit, to be computed as hereinafter provided, against the tax imposed  
8 by this article where the taxpayer has been certified pursuant to arti-  
9 cle eighteen-B of the general municipal law. The amount of such credit  
10 shall be as prescribed in paragraph four hereof.

11 (2) For purposes of this subsection, the following terms shall have  
12 the following meanings: (A) "Empire zone wages" means wages paid by the  
13 taxpayer for full-time employment, other than to general executive offi-  
14 cers, during the taxable year in an area designated or previously desig-  
15 nated as an empire zone or zone equivalent area pursuant to article  
16 eighteen-B of the general municipal law where such employment is in a  
17 job created in the area (i) during the period of its designation as an  
18 empire zone, (ii) within four years of the expiration of such desig-  
19 nation, or (iii) during the ten year period immediately following the  
20 date of designation as a zone equivalent area, provided, however, that  
21 if the taxpayer's certification under article eighteen-B of the general  
22 municipal law is revoked with respect to an empire zone or zone equiv-  
23 alent area, any wages paid by the taxpayer, on or after the effective  
24 date of such decertification, for employment in such zone shall not  
25 constitute empire zone wages.

26 (B) "Targeted employee" means a New York resident who receives empire  
27 zone wages and who is (i) an eligible individual under the provisions of  
28 the targeted jobs tax credit (section fifty-one of the internal revenue  
29 code), (ii) eligible for benefits under the provisions of the workforce  
30 investment act as a dislocated worker or low-income individual (P.L.  
31 105-220, as amended), (iii) a recipient of public assistance benefits,  
32 (iv) an individual whose income is below the most recently established  
33 poverty rate promulgated by the United States department of commerce, or  
34 a member of a family whose family income is below the most recently  
35 established poverty rate promulgated by the appropriate federal agency  
36 or (v) an honorably discharged member of any branch of the armed forces  
37 of the United States.

38 An individual who satisfies the criteria set forth in clause (i),  
39 (ii), (iv) or (v) of this subparagraph at the time of initial employment  
40 in the job with respect to which the credit is claimed, or who satisfies  
41 the criterion set forth in clause (iii) of this subparagraph at such  
42 time or at any time within the previous two years, shall be a targeted  
43 employee so long as such individual continues to receive empire zone  
44 wages.

45 (C) "Average number of individuals, excluding general executive offi-  
46 cers, employed full-time" shall be computed by ascertaining the number  
47 of such individuals employed by the taxpayer on the thirty-first day of  
48 March, the thirtieth day of June, the thirtieth day of September and the  
49 thirty-first day of December during each taxable year or other applica-  
50 ble period, by adding together the number of such individuals ascer-  
51 tained on each of such dates and dividing the sum so obtained by the  
52 number of such dates occurring within such taxable year or other appli-  
53 cable period.

54 (3) The credit provided for herein shall be allowed only where the  
55 average number of individuals, excluding general executive officers,  
56 employed full-time by the taxpayer in (A) (i) the state and (ii) the

empire zone or area previously constituting such zone or zone equivalent area, during the taxable year exceeds the average number of such individuals employed full-time by the taxpayer in (B) (i) the state and (ii) such zone or area subsequently or previously constituting such zone or such zone equivalent area, respectively, during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone or area. Where the taxpayer provided full-time employment within (C) (i) the state or (ii) such zone or area during only a portion of such four-year period, then for purposes of this paragraph the term "four years" shall be deemed to refer instead to such portion, if any.

The credit shall be allowed only with respect to the first taxable year during which payments of empire zone wages are made and the conditions set forth in this paragraph are satisfied, and with respect to each of the four taxable years next following (but only, with respect to each of such years, if such conditions are satisfied), in accordance with paragraph four of this subsection. Subsequent certifications of the taxpayer pursuant to article eighteen-B of the general municipal law, at the same or a different location in the same empire zone or zone equivalent area or at a location in a different empire zone or zone equivalent area, shall not extend the five taxable year time limitation on the allowance of the credit set forth in the preceding sentence. Provided, further, however, that no credit shall be allowed with respect to any taxable year beginning more than four years following the taxable year in which designation as an empire zone expired or more than ten years after the designation as a zone equivalent area.

(4) The amount of the credit shall equal the sum of (A) the product of three thousand dollars and the average number of individuals (excluding general executive officers) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who (i) received empire zone wages for more than half of the taxable year, (ii) received, with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and (iii) are targeted employees; and

(B) the product of fifteen hundred dollars and the average number of individuals (excluding general executive officers and individuals described in subparagraph (A) of this paragraph) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who received empire zone wages for more than half of the taxable year.

(C) For purposes of calculating the amount of the credit, individuals employed within an empire zone or zone equivalent area within the immediately preceding sixty months by a related person, as such term is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, shall not be included in the average number of individuals described in subparagraph (A) or subparagraph (B) of this paragraph, unless such related person was never allowed a credit under this subsection with respect to such employees. For the purposes of this subparagraph, a "related person" shall include an entity which would have qualified as a "related person" to the taxpayer if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

(D) If a taxpayer is certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the gener-



1 al municipal law, the dollar amounts specified under subparagraph (A) or  
2 (B) of this paragraph shall be increased by five hundred dollars for  
3 each qualifying individual under such subparagraph who received, during  
4 the taxable year, wages in excess of forty thousand dollars.

5 (E) The requirement in this paragraph that an employee must receive  
6 empire zone wages for more than half the taxable year shall not apply in  
7 the first taxable year of a taxpayer satisfying the criteria set forth  
8 in this subparagraph. In such a case, the credit allowed under this  
9 subsection shall be computed by utilizing the number of individuals  
10 (excluding general executive officers) employed full time by the taxpay-  
11 er on the last day of its first taxable year. A taxpayer shall satisfy  
12 the following criteria: (i) such taxpayer acquired real or tangible  
13 personal property during its first taxable year from an entity which is  
14 not a related person (as such term is defined in subdivision (g) of  
15 section fourteen of this chapter); (ii) the first taxable year of such  
16 taxpayer shall be a short taxable year of not more than seven months in  
17 duration; and (iii) the number of individuals employed full-time on the  
18 last day of such first taxable year shall be at least one hundred ninety  
19 and substantially all of such individuals must have been previously  
20 employed by the entity from whom such taxpayer purchased its assets.

21 Provided, further, however, that the credit provided for herein with  
22 respect to the taxable year, and carryovers of such credit to the taxa-  
23 ble year, deducted from the tax otherwise due, may not, in the aggre-  
24 gate, exceed fifty percent of the tax imposed under section fourteen  
25 hundred fifty-five of this article computed without regard to any credit  
26 provided for under this article.

27 (5) The credit and carryovers of such credit allowed under this  
28 subsection for any taxable year shall not, in the aggregate, reduce the  
29 tax due for such year to less than the minimum tax fixed by subsection  
30 (b) of section fourteen hundred fifty-five of this article. However, if  
31 the amount of credit or carryovers of such credit, or both, allowed  
32 under this subsection for any taxable year reduces the tax to such  
33 amount, or if any part of the credit or carryovers of such credit may  
34 not be deducted from the tax otherwise due by reason of the final  
35 sentence in paragraph four hereof, any amount of credit or carryovers of  
36 such credit thus not deductible in such taxable year may be carried over  
37 to the following year or years and may be deducted from the taxpayer's  
38 tax for such year or years.

39 (5-a) Any carry over of a credit from prior taxable years will not be  
40 allowed if an empire zone retention certificate is not issued pursuant  
41 to subdivision (w) of section nine hundred fifty-nine of the general  
42 municipal law to the empire zone enterprise which is the basis of the  
43 credit.

44 (e-1) Hire a vet credit. (1) Allowance of credit. For taxable years  
45 beginning on or after January first, two thousand twenty-three and  
46 before January first, two thousand twenty-five, a taxpayer shall be  
47 allowed a credit, to be computed as provided in this subsection, against  
48 the tax imposed by this article, for hiring and employing, for not less  
49 than one year and for not less than thirty-five hours each week, a qual-  
50 ified veteran within the state. The taxpayer may claim the credit in the  
51 year in which the qualified veteran completes one year of employment by  
52 the taxpayer. If the taxpayer claims the credit allowed under this  
53 subsection, the taxpayer may not use the hiring of a qualified veteran  
54 that is the basis for this credit in the basis of any other credit  
55 allowed in this article.

56 (2) Qualified veteran. A qualified veteran is an individual:

1 (A) who served on active duty in the United States army, navy, air  
2 force, marine corps, coast guard or the reserves thereof, or who served  
3 in active military service of the United States as a member of the army  
4 national guard, air national guard, New York guard or New York naval  
5 militia; who was released from active duty by general or honorable  
6 discharge after September eleventh, two thousand one;

7 (B) who commences employment by the qualified taxpayer on or after  
8 January first, two thousand fourteen, and before January first, two  
9 thousand seventeen; and

10 (C) who certifies by signed affidavit, under penalty of perjury, that  
11 he or she has not been employed for thirty-five or more hours during any  
12 week in the one hundred eighty day period immediately prior to his or  
13 her employment by the taxpayer.

14 (3) Employer prohibition. An employer shall not discharge an employee  
15 and hire a qualifying veteran solely for the purpose of qualifying for  
16 this credit.

17 (4) Amount of credit. The amount of the credit shall be ten percent of  
18 the total amount of wages paid to the qualified veteran during the  
19 veteran's first full year of employment. Provided, however, that, if the  
20 qualified veteran is a disabled veteran, as defined in paragraph (b) of  
21 subdivision one of section eighty-five of the civil service law, the  
22 amount of the credit shall be fifteen percent of the total amount of  
23 wages paid to the qualified veteran during the veteran's first full year  
24 of employment. The credit allowed pursuant to this subsection shall not  
25 exceed in any taxable year, five thousand dollars for any qualified  
26 veteran and fifteen thousand dollars for any qualified veteran who is a  
27 disabled veteran.

28 (5) Carryover. The credit allowed under this subsection for any taxa-  
29 ble year shall not reduce the tax due for such year to less than the  
30 amount prescribed in paragraph three of subsection (b) of section four-  
31 teen hundred fifty-five of this article. However, if the amount of cred-  
32 it allowable under this subsection for any taxable year reduces the tax  
33 to such amount, any amount of credit not deductible in such taxable year  
34 may be carried over to the following three years and may be deducted  
35 from the taxpayer's tax for such year or years.

36 (f) Credit for employment of persons with disabilities. (1) Allowance  
37 of credit. A taxpayer shall be allowed a credit, to be computed as here-  
38 inafter provided, against the tax imposed by this article, for employing  
39 within the state a qualified employee.

40 (2) Qualified employee. A qualified employee is an individual:

41 (A) who is certified by the education department, or in the case of an  
42 individual who is blind or visually handicapped, by the state agency  
43 responsible for provision of vocational rehabilitation services to the  
44 blind and visually handicapped: (i) as a person with a disability which  
45 constitutes or results in a substantial handicap to employment and (ii)  
46 as having completed or as receiving services under an individualized  
47 written rehabilitation plan approved by the education department or  
48 other state agency responsible for providing vocational rehabilitation  
49 services to such individual; and

50 (B) who has worked on a full-time basis for the employer who is claim-  
51 ing the credit for at least one hundred eighty days or four hundred  
52 hours.

53 (3) Amount of credit. Except as provided in paragraph four of this  
54 subsection, the amount of credit shall be thirty-five percent of the  
55 first six thousand dollars in qualified first-year wages earned by each  
56 qualified employee. "Qualified first-year wages" means wages paid or

1 incurred by the taxpayer during the taxable year to qualified employees  
2 which are attributable, with respect to any such employee, to services  
3 rendered during the one-year period beginning with the day the employee  
4 begins work for the taxpayer.

5 (4) Credit where federal work opportunity tax credit applies. With  
6 respect to any qualified employee whose qualified first-year wages under  
7 paragraph three of this subsection also constitute qualified first-year  
8 wages for purposes of the work opportunity tax credit for vocational  
9 rehabilitation referrals under section fifty-one of the internal revenue  
10 code, the amount of credit under this subsection shall be thirty-five  
11 percent of the first six thousand dollars in qualified second-year wages  
12 earned by each such employee. "Qualified second-year wages" means wages  
13 paid or incurred by the taxpayer during the taxable year to qualified  
14 employees which are attributable, with respect to any such employees, to  
15 services rendered during the one-year period beginning one year after  
16 the employee begins work for the taxpayer.

17 (5) Carryover. The credit and carryovers of such credit allowed under  
18 this subsection for any taxable year shall not, in the aggregate, reduce  
19 the tax due for such year to less than the minimum tax fixed by  
20 subsection (b) of section fourteen hundred fifty-five of this article.  
21 However, if the amount of credit or carryovers of such credit, or both,  
22 allowed under this subdivision for any taxable year reduces the tax to  
23 such amount, then any amount of credit or carryovers of such credit thus  
24 not deductible in such taxable year may be carried over to the following  
25 year or years and may be deducted from the taxpayer's tax for such year  
26 or years.

27 (6) Coordination with federal work opportunity tax credit. The  
28 provisions of sections fifty-one and fifty-two of the internal revenue  
29 code, as such sections applied on October first, nineteen hundred nine-  
30 ty-six, that apply to the work opportunity tax credit for vocational  
31 rehabilitation referrals shall apply to the credit under this subsection  
32 to the extent that such sections are consistent with the specific  
33 provisions of this subsection, provided that in the event of a conflict  
34 the provisions of this subsection shall control.

35 (g) Order of credits. Credits allowable under this article which  
36 cannot be carried over and which are not refundable shall be deducted  
37 first. Credits allowable under this article which can be carried over,  
38 and carryovers of such credits, shall be deducted next, and among such  
39 credits, those whose carryover is of limited duration shall be deducted  
40 before those whose carryover is of unlimited duration; provided, howev-  
41 er, that the credit allowable under subsection (e) of this section shall  
42 be deducted prior to all other credits described in this sentence.  
43 Credits allowable under this article which are refundable shall be  
44 deducted last.

45 (h) Credits for New York S corporations. Notwithstanding the  
46 provisions of this section, no carryover of credit allowable in a New  
47 York C year shall be deducted from the tax otherwise due under this  
48 article in a New York S year, and no credit allowable in a New York S  
49 year, or carryover of such credit, shall be deducted from the tax  
50 imposed by this article. However, a New York S year shall be treated as  
51 a taxable year for purposes of determining the number of taxable years  
52 to which a credit may be carried over under this section. Notwithstand-  
53 ing the first sentence of this subsection, however, the credit for the  
54 special additional mortgage recording tax shall be allowed as provided  
55 in subsection (c) of this section, and the carryover of any such credit

1 shall be determined without regard to whether the credit is carried from  
2 a New York C year to a New York S year or vice-versa.

3 (i) Investment tax credit (ITC). (1) A taxpayer shall be allowed a  
4 credit, to be computed as hereinafter provided, against the tax imposed  
5 by this article. Provided, however, a taxpayer shall not be allowed such  
6 credit provided by this paragraph unless (i) eighty percent or more of  
7 the employees performing the administrative and support functions  
8 resulting from or related to the qualifying uses of such equipment are  
9 located in this state, or (ii) the average number of employees that  
10 perform the administrative and support functions resulting from or  
11 related to the qualifying uses of such equipment and are located in this  
12 state during the taxable year for which the credit is claimed is equal  
13 to or greater than ninety-five percent of the average number of employ-  
14 ees that perform these functions and are located in this state during  
15 the thirty-six months immediately preceding the year for which the cred-  
16 it is claimed, or (iii) the number of employees located in this state  
17 during the taxable year for which the credit is claimed is equal to or  
18 greater than ninety percent of the number of employees located in this  
19 state on December thirty-first, nineteen hundred ninety-eight or, if the  
20 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-  
21 eight, the last day of its first taxable year ending after December  
22 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes  
23 subject to tax in this state after the taxable year beginning in nine-  
24 teen hundred ninety-eight, then the taxpayer is not required to satisfy  
25 the employment test provided in the preceding sentence of this subpara-  
26 graph for its first taxable year. For the purposes of subparagraph (iii)  
27 of this paragraph the employment test will be based on the number of  
28 employees located in this state on the last day of the first taxable  
29 year the taxpayer is subject to tax in this state. If the uses of the  
30 property must be aggregated to determine whether the property is princi-  
31 pally used in qualifying uses, then either each affiliate using the  
32 property must satisfy this employment test or this employment test must  
33 be satisfied through the aggregation of the employees of the taxpayer,  
34 its affiliated regulated broker, dealer, and registered investment  
35 adviser using the property. The amount of the credit shall be the  
36 percent provided for herein below of the investment credit base. The  
37 investment credit base is the cost or other basis for federal income tax  
38 purposes of tangible personal property and other tangible property,  
39 including buildings and structural components of buildings, described in  
40 paragraph two of this subsection, less the amount of the nonqualified  
41 nonrecourse financing with respect to such property to the extent such  
42 financing would be excludible from the credit base pursuant to section  
43 46(c)(8) of the Internal Revenue Code (treating such property as section  
44 thirty-eight property irrespective of whether or not it in fact consti-  
45 tutes section thirty-eight property). If, at the close of a taxable  
46 year following the taxable year in which such property was placed in  
47 service, there is a net decrease in the amount of nonqualified nonrec-  
48 ourse financing with respect to such property, such net decrease shall  
49 be treated as if it were the cost or other basis of property described  
50 in paragraph two of this subsection acquired, constructed, reconstructed  
51 or erected during the year of the decrease in the amount of nonqualified  
52 nonrecourse financing. In the case of a combined report the term invest-  
53 ment credit base shall mean the sum of the investment credit base of  
54 each corporation included on such report. The percentage to be used to  
55 compute the credit allowed pursuant to this subsection shall be

56 For taxable years beginning after

1       1997 ..... five percent with  
2       respect to the first three hundred fifty million dollars of  
3       the investment credit base, and four percent with respect to  
4       the investment credit base in excess of three hundred fifty  
5       million dollars.

6       (2) A credit shall be allowed under this subsection with respect to  
7       tangible personal property and other tangible property, including build-  
8       ings and structural components of buildings, which are: depreciable  
9       pursuant to section one hundred sixty-seven of the Internal Revenue  
10       Code, have a useful life of four years or more, are acquired by purchase  
11       as defined in section one hundred seventy-nine (d) of the Internal  
12       Revenue Code, have a situs in this state and are (A) principally used in  
13       the ordinary course of the taxpayer's trade or business as a broker or  
14       dealer in connection with the purchase or sale (which shall include but  
15       not be limited to the issuance, entering into, assumption, offset,  
16       assignment, termination, or transfer) of stocks, bonds or other securi-  
17       ties as defined in section four hundred seventy-five (c) (2) of the  
18       Internal Revenue Code, or of commodities as defined in section four  
19       hundred seventy-five (e) of the Internal Revenue Code, or (B) principal-  
20       ly used in the ordinary course of the taxpayer's trade or business of  
21       providing investment advisory services for a regulated investment compa-  
22       ny as defined in section eight hundred fifty-one of the Internal Revenue  
23       Code, or lending, loan arrangement or loan origination services to  
24       customers in connection with the purchase or sale (which shall include  
25       but not be limited to the issuance, entering into, assumption, offset,  
26       assignment, termination, or transfer) of securities as defined in  
27       section four hundred seventy-five (c) (2) of the Internal Revenue Code.  
28       For purposes of subparagraphs (A) and (B) of this paragraph, property  
29       purchased by a taxpayer affiliated with a regulated broker, dealer, or  
30       registered investment adviser is allowed a credit under this subsection  
31       if the property is used by its affiliated regulated broker, dealer, or  
32       registered investment adviser in accordance with this subsection. For  
33       purposes of determining if the property is principally used in qualify-  
34       ing uses, the uses by the taxpayer described in subparagraphs (A) and  
35       (B) of this paragraph may be aggregated. In addition, the uses by the  
36       taxpayer, its affiliated regulated broker, dealer and registered invest-  
37       ment adviser under either or both of such subparagraphs may be aggre-  
38       gated.

39       (3) A taxpayer shall not be allowed a credit under this subsection  
40       with respect to any property described in paragraph two of this  
41       subsection if such property qualifies for the deduction allowed under  
42       subsection (k) of section fourteen hundred fifty-three of this article  
43       whether or not such amount shall have been deducted.

44       (4) A taxpayer shall not be allowed a credit under this subsection  
45       with respect to tangible personal property and other tangible property,  
46       including buildings and structural components of buildings, which it  
47       leases to any other person or corporation except where a taxpayer leases  
48       property to an affiliated broker, dealer, or registered investment  
49       adviser that uses such property in accordance with subparagraph (A) or  
50       (B) of paragraph two of this subsection. For purposes of the preceding  
51       sentence, any contract or agreement to lease or rent or for a license to  
52       use such property shall be considered a lease.

53       (5) Except as otherwise provided in this paragraph, the credit allowed  
54       under this subsection for any taxable year shall not reduce the tax due  
55       for such year to less than the dollar amount fixed as a minimum tax by  
56       subsection (b) of section fourteen hundred fifty-five of this article.



1 However, if the amount of credit allowable under this subsection for any  
2 taxable year reduces the tax to such amount, any amount of credit  
3 allowed for a taxable year may be carried over to the fifteen taxable  
4 years next following such taxable year and may be deducted from the  
5 taxpayer's tax for such year or years. In lieu of such carryover, any  
6 such taxpayer which qualifies as a new business under paragraph eight of  
7 this subsection may elect to treat the amount of such carryover as an  
8 overpayment of tax to be credited or refunded in accordance with the  
9 provisions of section one thousand eighty-six of this chapter, provided,  
10 however, the provisions of subsection (c) of section one thousand eight-  
11 y-eight of this chapter notwithstanding no interest shall be paid there-  
12 on.

13 (6) At the option of the taxpayer an eligible business facility for  
14 which a credit is allowed under subsection (b) of this section may be  
15 treated as property (A) principally used in the ordinary course of the  
16 taxpayer's trade or business as a broker or dealer in connection with  
17 the purchase or sale (which shall include but not be limited to the  
18 issuance, entering into, assumption, offset, assignment, termination, or  
19 transfer) of stocks, bonds or other securities as defined in section  
20 four hundred seventy-five (c) (2) of the Internal Revenue Code, or of  
21 commodities as defined in section four hundred seventy-five (e) of the  
22 Internal Revenue Code, or (B) principally used in the ordinary course of  
23 the taxpayer's trade or business of providing investment advisory  
24 services for a regulated investment company as defined in section eight  
25 hundred fifty-one of the Internal Revenue Code, or lending, loan  
26 arrangement or loan origination services to customers in connection with  
27 the purchase or sale (which shall include but not be limited to the  
28 issuance, entering into, assumption, offset, assignment, termination, or  
29 transfer) of securities as defined in section four hundred seventy-five  
30 (c) (2) of the Internal Revenue Code provided the property otherwise  
31 qualifies under paragraph two of this subsection, in which event a cred-  
32 it shall not be allowed under subsection (b) of this section.

33 (7)(A) With respect to property which is depreciable pursuant to  
34 section one hundred sixty-seven of the Internal Revenue Code but is not  
35 subject to the provisions of section one hundred sixty-eight of such  
36 code and which is disposed of or ceases to be in qualified use prior to  
37 the end of the taxable year in which the credit is to be taken, the  
38 amount of the credit shall be that portion of the credit provided for in  
39 this subsection which represents the ratio which the months of qualified  
40 use bear to the months of useful life. If property on which credit has  
41 been taken is disposed of or ceases to be in qualified use prior to the  
42 end of its useful life, the difference between the credit taken and the  
43 credit allowed for actual use must be added back in the year of disposi-  
44 tion. Provided, however, if such property is disposed of or ceases to be  
45 in qualified use after it has been in qualified use for more than twelve  
46 consecutive years, it shall not be necessary to add back the credit as  
47 provided in this subparagraph. The amount of credit allowed for actual  
48 use shall be determined by multiplying the original credit by the ratio  
49 which the months of qualified use bear to the months of useful life. For  
50 purposes of this subparagraph, useful life of property shall be the same  
51 as the taxpayer uses for depreciation purposes when computing his feder-  
52 al income tax liability.

53 (B) Except with respect to that property to which subparagraph (D) of  
54 this paragraph applies, with respect to three-year property, as defined  
55 in subsection (e) of section one hundred sixty-eight of the Internal  
56 Revenue Code, which is disposed of or ceases to be in qualified use

1 prior to the end of the taxable year in which the credit is to be taken,  
2 the amount of the credit shall be that portion of the credit provided  
3 for in this subsection which represents the ratio which the months of  
4 qualified use bear to thirty-six. If property on which credit has been  
5 taken is disposed of or ceases to be in qualified use prior to the end  
6 of thirty-six months, the difference between the credit taken and the  
7 credit allowed for actual use must be added back in the year of disposi-  
8 tion. The amount of credit allowed for actual use shall be determined by  
9 multiplying the original credit by the ratio which the months of quali-  
10 fied use bear to thirty-six.

11 (C) Except with respect to that property to which subparagraph (D) of  
12 this paragraph applies, with respect to property subject to the  
13 provisions of section one hundred sixty-eight of the Internal Revenue  
14 Code, other than three-year property as defined in subsection (e) of  
15 such section one hundred sixty-eight which is disposed of or ceases to  
16 be in qualified use prior to the end of the taxable year in which the  
17 credit is to be taken, the amount of the credit shall be that portion of  
18 the credit provided for in this subsection which represents the ratio  
19 which the months of qualified use bear to sixty. If property on which  
20 credit has been taken is disposed of or ceases to be in qualified use  
21 prior to the end of sixty months, the difference between the credit  
22 taken and the credit allowed for actual use must be added back in the  
23 year of disposition. The amount of credit allowed for actual use shall  
24 be determined by multiplying the original credit by the ratio which the  
25 months of qualified use bear to sixty.

26 (D) With respect to any property to which section one hundred sixty-  
27 eight of the Internal Revenue Code applies, which is a building or a  
28 structural component of a building and which is disposed of or ceases to  
29 be in a qualified use prior to the end of the taxable year in which the  
30 credit is to be taken, the amount of the credit shall be that portion of  
31 the credit provided for in this subsection which represents the ratio  
32 which the months of qualified use bear to the total number of months  
33 over which the taxpayer chooses to deduct the property under the Inter-  
34 nal Revenue Code. If property on which credit has been taken is disposed  
35 of or ceases to be in qualified use prior to the end of the period over  
36 which the taxpayer chooses to deduct the property under the Internal  
37 Revenue Code, the difference between the credit taken and the credit  
38 allowed for actual use must be added back in the year of disposition.  
39 Provided, however, if such property is disposed of or ceases to be in  
40 qualified use after it has been in qualified use for more than twelve  
41 consecutive years, it shall not be necessary to add back the credit as  
42 provided in this subparagraph. The amount of credit allowed for actual  
43 use shall be determined by multiplying the original credit by the ratio  
44 which the months of qualified use bear to the total number of months  
45 over which the taxpayer chooses to deduct the property under the Inter-  
46 nal Revenue Code.

47 (E) For taxable years commencing on or after January first, nineteen  
48 hundred ninety-eight the amount required to be added back pursuant to  
49 this paragraph shall be augmented by an amount equal to the product of  
50 such amount and the underpayment rate of interest (without regard to  
51 compounding), set by the commissioner pursuant to subsection (e) of  
52 section one thousand ninety-six of this chapter, in effect on the last  
53 day of the taxable year.

54 (F) If, as of the close of the taxable year, there is a net increase  
55 with respect to the taxpayer in the amount of nonqualified nonrecourse  
56 financing (within the meaning of section 46(c)(8) of the Internal Reven-

ue Code) with respect to any property with respect to which the credit under this subsection was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(8) For purposes of paragraph five of this subsection, a new business shall include any corporation, except a corporation which:

(A) 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 or controlled, either directly or indirectly, by a taxpayer subject to tax under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A or article thirty-three of this chapter; or

(B) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A or article thirty-three of this chapter; article twenty-three of this chapter 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) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

(C) has been subject to tax under this article for more than five taxable years (excluding short taxable years).

(9)(A)(i) If a taxpayer is required by paragraph seven of this subsection to add back a portion of the credit taken because property was destroyed or ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist attacks, such taxpayer may elect to defer the amount to be recaptured for all such property to the taxable year next succeeding the taxable year in which the destruction or cessation of qualified use occurred. The taxable year in which the destruction or cessation of qualified use occurred shall be hereinafter referred to as the "recapture event taxable year". If the taxpayer's total employment number in the state on the last day of the taxable year next succeeding the recapture event taxable year is a significant percentage of the taxpayer's average total employment number in the state for the taxpayer's recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year, then the taxpayer shall not be required to recapture any credit with respect to such property. If the taxpayer's total employment number in the state on the last day of the taxable year next succeeding the recapture event taxable year is not a significant percentage of the taxpayer's average total employment number in the state for the taxpayer's recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year, the taxpayer shall be required to recapture the portion of the credit taken under this subsection, as required by paragraph seven of this subsection, for all of its property destroyed or which ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist

1 attacks. The amount required to be recaptured shall be augmented as  
2 required pursuant to subparagraph (E) of paragraph seven of this  
3 subsection by using an interest rate equal to two times the rate of  
4 interest specified in such subparagraph seven applicable for the taxable  
5 year in which the recapture occurs.

6 (ii) The taxpayer's total employment number shall include all employ-  
7 ees of the taxpayer employed full-time by the taxpayer in the state. The  
8 average total employment number for the recapture event taxable year and  
9 the two taxable years immediately preceding the recapture event taxable  
10 year shall be computed by determining the taxpayer's total employment  
11 number on the thirty-first day of March, the thirtieth day of June, the  
12 thirtieth day of September and the thirty-first day of December during  
13 the applicable taxable years, adding together the number of such indi-  
14 viduals determined to be so employed on each of such dates and dividing  
15 the sum so obtained by the number of such dates occurring within such  
16 applicable taxable years. However, in the case of the taxable year which  
17 included September eleventh, two thousand one, the average total employ-  
18 ment number for such taxable year shall be determined by using the total  
19 employment number on September first, two thousand one in lieu of  
20 September thirtieth, two thousand one and, if such taxable year included  
21 December thirty-first, two thousand one, by excluding the total employ-  
22 ment number on December thirty-first, two thousand one.

23 (B) In lieu of subparagraph (A) of this paragraph, a taxpayer may  
24 elect to recapture the portion of the credit taken under this  
25 subsection, as required by paragraph seven of this subsection, for all  
26 of its property destroyed or which ceased to be in qualified use as a  
27 direct result of the September eleventh, two thousand one terrorist  
28 attacks, in the taxable year in which the destruction or cessation of  
29 qualified use occurred. If the taxpayer makes such election and acquires  
30 property (hereinafter referred to as "replacement property") to replace  
31 any property destroyed as a direct result of the September eleventh, two  
32 thousand one terrorist attacks (regardless of when such property was  
33 placed in service and whether a credit was claimed on that property  
34 pursuant to this subsection), and such replacement property is similar  
35 or related in service or use to such destroyed property, the investment  
36 credit base of the replacement property shall be determined without  
37 regard to any basis reduction required pursuant to section 1033 of the  
38 internal revenue code.

39 (C) The election made by the taxpayer under subparagraph (A) or (B) of  
40 this paragraph shall be made in the manner and form prescribed by the  
41 commissioner.

42 (D) A taxpayer, over fifty percent of whose employees died as a direct  
43 result of the September eleventh, two thousand one terrorist attacks,  
44 may make the election provided for in subparagraph (A) of this para-  
45 graph, and shall not be required to recapture any credit with respect to  
46 property which was destroyed or which ceased to be in qualified use as a  
47 direct result of such attacks, whether or not it meets the employment  
48 test specified in clause (i) of subparagraph (A) of this paragraph.

49 (j) Credit for purchase of an automated external defibrillator. A  
50 taxpayer shall be allowed a credit as hereinafter provided, against the  
51 tax imposed by this article for the purchase, other than for resale, of  
52 an automated external defibrillator, as such term is defined in section  
53 three thousand-b of the public health law. The amount of the credit  
54 shall be the cost to the taxpayer of automated external defibrillators  
55 purchased during the taxable year, such credit not to exceed five  
56 hundred dollars with respect to each unit purchased. The credit allowed

1 under this subsection for any taxable year shall not reduce the tax due  
2 for such year to less than the minimum tax fixed by subsection (b) of  
3 section fourteen hundred fifty-five of this article.

4 (k) (1) A taxpayer shall be allowed a credit against the tax imposed  
5 by this article equal to twenty percent of the premium paid during the  
6 taxable year for long-term care insurance. In order to qualify for such  
7 credit, the taxpayer's premium payment must be for the purchase of or  
8 for continuing coverage under a long-term care insurance policy that  
9 qualifies for such credit pursuant to section one thousand one hundred  
10 seventeen of the insurance law.

11 (2) In no event shall the credit herein provided for, and carryovers  
12 of such credit, be allowed in an amount which will reduce the tax paya-  
13 ble to less than the dollar amount fixed as a minimum tax by subsection  
14 (b) of section fourteen hundred fifty-five of this article. If, however,  
15 the amount of credit or carryovers of such credit, or both, allowable  
16 under this subsection for any taxable year reduces the tax to such  
17 amount, any amount of credit or carryovers of such credit thus not  
18 deductible in such taxable year may be carried over to the following  
19 year or years and may be deducted from the taxpayer's tax for such year  
20 or years.

21 (1) Low-income housing credit. (1) Allowance of credit. A taxpayer  
22 shall be allowed a credit against the tax imposed by this article with  
23 respect to the ownership of eligible low-income buildings, computed as  
24 provided in section eighteen of this chapter.

25 (2) Application of credit. The credit and carryovers of such credit  
26 allowed under this subsection for any taxable year shall not, in the  
27 aggregate, reduce the tax due for such year to less than the minimum tax  
28 fixed by subsection (b) of section fourteen hundred fifty-five of this  
29 article. However, if the amount of credit or carryovers of such credit,  
30 or both, allowed under this subsection for any taxable year reduces the  
31 tax to such amount, then any amount of credit or carryovers of such  
32 credit thus not deductible in such taxable year may be carried over to  
33 the following year or years and may be deducted from the taxpayer's tax  
34 for such year or years.

35 (3) Credit recapture. For provisions requiring recapture of credit,  
36 see subdivision (b) of section eighteen of this chapter.

37 (m) Green building credit. (1) Allowance of credit. A taxpayer shall  
38 be allowed a credit, to be computed as provided in section nineteen of  
39 this chapter, against the tax imposed by this article.

40 (2) Carryover. The credit and carryovers of such credit allowed under  
41 this subsection for any taxable year shall not, in the aggregate, reduce  
42 the tax due for such year to less than the minimum tax fixed by  
43 subsection (b) of section fourteen hundred fifty-five of this article.  
44 However, if the amount of credit or carryovers of such credit, or both,  
45 allowed under this subsection for any taxable year reduces the tax to  
46 such amount, then any amount of credit or carryovers of such credit thus  
47 not deductible in such taxable year may be carried over to the following  
48 year or years and may be deducted from the taxpayer's tax for such year  
49 or years.

50 (n) Credit for transportation improvement contributions. (1) Allowance  
51 of credit. A taxpayer shall be allowed a credit, to be computed as  
52 provided in section twenty of this chapter, against the tax imposed by  
53 this article.

54 (2) Application of credit. The credit allowed under this subsection  
55 for any taxable year shall not reduce the tax due for such year to less  
56 than the minimum tax fixed by subsection (b) of section fourteen hundred



fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, then 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 one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(3) Credit recapture. For provisions requiring recapture of credit, see subdivision (c) of section twenty of this chapter.

(o) QEZE credit for real property taxes. (1) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a credit for eligible real property taxes, to be computed as provided in section fifteen of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, then 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 one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(p) QEZE tax reduction credit. (1) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a QEZE tax reduction credit, to be computed as provided in section sixteen of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article.

(q) Brownfield redevelopment tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-one of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credits allowed under this subsection 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 one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(r) Remediated brownfield credit for real property taxes for qualified sites. (1) Allowance of credit. A taxpayer which is a developer of a qualified site shall be allowed a credit for eligible real property taxes, to be computed as provided in subdivision (b) of section twenty-two of this chapter, against the tax imposed by this article. For purposes of this subsection, the terms "qualified site" and "developer"

1 shall have the same meaning as set forth in paragraphs two and three,  
2 respectively, of subdivision (a) of section twenty-two of this chapter.

3 (2) Application of credit. The credit allowed under this subsection  
4 for any taxable year shall not reduce the tax due for such year to less  
5 than the minimum tax fixed by paragraph three of subsection (b) of  
6 section fourteen hundred fifty-five of this article. However, if the  
7 amount of credit allowed under this subsection for any taxable year  
8 reduces the tax to such amount, any amount of credit thus not deductible  
9 in such taxable year shall be treated as an overpayment of tax to be  
10 credited or refunded in accordance with the provisions of section one  
11 thousand eighty-six of this chapter. Provided, however, the provisions  
12 of subsection (c) of section one thousand eighty-eight of this chapter  
13 notwithstanding, no interest shall be paid thereon.

14 (s) Environmental remediation insurance credit. (1) Allowance of cred-  
15 it. A taxpayer shall be allowed a credit, to be computed as provided in  
16 section twenty-three of this chapter, against the tax imposed by this  
17 article.

18 (2) Application of credit. The credit allowed under this subdivision  
19 for any taxable year shall not reduce the tax due for such year to less  
20 than the minimum tax fixed by paragraph three of subsection (b) of  
21 section fourteen hundred fifty-five of this article. However, if the  
22 amount of credits allowed under this subdivision for any taxable year  
23 reduces the tax to such amount, any amount of credit thus not deductible  
24 in such taxable year shall be treated as an overpayment of tax to be  
25 credited or refunded in accordance with the provisions of section one  
26 thousand eighty-six of this chapter. Provided, however, the provisions  
27 of subsection (c) of section one thousand eighty-eight of this chapter  
28 notwithstanding, no interest shall be paid thereon.

29 (t) Security training tax credit. (1) Allowance of credit. A taxpayer  
30 shall be allowed a credit, to be computed as provided in section twen-  
31 ty-six of this chapter, against the tax imposed by this article.

32 (2) Application of credit. The credit allowed under this subsection  
33 for any taxable year shall not reduce the tax due for such year to less  
34 than the minimum tax fixed by paragraph three of subsection (b) of  
35 section fourteen hundred fifty-five of this article. However, if the  
36 amount of credits allowed under this subsection for any taxable year  
37 reduces the tax to such amount, any amount of credit thus not deductible  
38 in such taxable year shall be treated as an overpayment of tax to be  
39 credited or refunded in accordance with the provisions of section one  
40 thousand eighty-six of this chapter. Provided, however, the provisions  
41 of subsection (c) of section one thousand eighty-eight of this chapter  
42 notwithstanding, no interest shall be paid thereon.

43 (u) Credit for fuel cell electric generating equipment expenditures.  
44 (1) Allowance of credit. For taxable years beginning before January  
45 first, two thousand nine, a taxpayer shall be allowed a credit against  
46 the tax imposed by this article, equal to its qualified fuel cell elec-  
47 tric generating equipment expenditures. This credit shall not exceed one  
48 thousand five hundred dollars per generating unit with respect to any  
49 taxable year. The credit provided for in this subsection shall be  
50 allowed with respect to the taxable year in which the fuel cell electric  
51 generating equipment is placed in service.

52 (2) Qualified fuel cell electric generating equipment expenditures.  
53 (A) Qualified fuel cell electric generating equipment expenditures are  
54 the costs, incurred on or after July first, two thousand five, associ-  
55 ated with the purchase of on-site electricity generation units utilizing  
56 proton exchange membrane fuel cells, providing a rated baseload capacity

1 of no less than one kilowatt and no more than one hundred kilowatts of  
2 electricity, which are located in this state at the time the qualified  
3 fuel cell electric generating equipment is placed in service.

4 (B) Qualified fuel cell electric generating equipment expenditures  
5 shall also include costs, incurred on or after July first, two thousand  
6 five, for materials, labor for on-site preparation, assembly and  
7 original installation, engineering services, designs and plans directly  
8 related to construction or installation and utility compliance costs.

9 (C) Such qualified expenditures shall not include interest or other  
10 finance charges.

11 (D) The amount of any federal, state or local grant received by the  
12 taxpayer, which was used for the purpose and/or installation of such  
13 equipment and which was not included in the federal gross income of the  
14 taxpayer, shall not be included in the amount of such qualified expendi-  
15 tures.

16 (3) Application of credit. The credit allowed under this subsection  
17 for any taxable year shall not reduce the tax due for such year to less  
18 than the minimum tax fixed by paragraph three of subsection (b) of  
19 section fourteen hundred fifty-five of this article. However, if the  
20 amount of credit allowed under this subsection for any taxable year  
21 reduces the tax to such amount, any amount of credit thus not deductible  
22 in such taxable year may be carried over to the following year or years  
23 and may be deducted from the taxpayer's tax for such year or years.

24 (v) Excelsior jobs program tax credit. (1) Allowance of credit. A  
25 taxpayer will be allowed a credit, to be computed as provided in section  
26 thirty-one of this chapter, against the tax imposed by this article.

27 (2) The credit allowed under this subsection for any taxable year will  
28 not reduce the tax due for such year to less than the minimum tax fixed  
29 by paragraph three of subsection (b) of section fourteen hundred fifty-  
30 five of this article. However, if the amount of credit allowed under  
31 this subsection for any taxable year reduces the tax to such amount, any  
32 amount of credit thus not deductible in such taxable year will be treat-  
33 ed as an overpayment of tax to be credited or refunded in accordance  
34 with the provisions of section one thousand eighty-six of this chapter.  
35 Provided, however, the provisions of subsection (c) of section one thou-  
36 sand eighty-eight of this chapter notwithstanding, no interest will be  
37 paid thereon.

38 (w) Credit for rehabilitation of historic properties. (1) (A) For  
39 taxable years beginning on or after January first, two thousand ten and  
40 before January first, two thousand twenty-four, a taxpayer shall be  
41 allowed a credit as hereinafter provided, against the tax imposed by  
42 this article, in an amount equal to one hundred percent of the amount of  
43 credit allowed the taxpayer with respect to a certified historic struc-  
44 ture under subsection (a)(2) of section 47 of the federal internal  
45 revenue code with respect to a certified historic structure located  
46 within the state. Provided, however, the credit shall not exceed five  
47 million dollars. For taxable years beginning on or after January first,  
48 two thousand twenty-four, a taxpayer shall be allowed a credit as here-  
49 inafter provided, against the tax imposed by this article, in an amount  
50 equal to thirty percent of the amount of credit allowed the taxpayer  
51 with respect to a certified historic structure under subsection (a)(2)  
52 of section 47 of the federal internal revenue code with respect to a  
53 certified historic structure located within the state. Provided, howev-  
54 er, the credit shall not exceed one hundred thousand dollars.

55 (B) If the taxpayer is a partner in a partnership or a shareholder of  
56 a New York S corporation, then the credit caps imposed in subparagraph

1 (A) of this paragraph shall be applied at the entity level, so that the  
2 aggregate credit allowed to all the partners or shareholders of each  
3 such entity in the taxable year does not exceed the credit cap that is  
4 applicable in that taxable year.

5 (2) Tax credits allowed pursuant to this subsection shall be allowed  
6 in the taxable year that the qualified rehabilitation is placed in  
7 service under section 167 of the federal internal revenue code.

8 (3) If the credit allowed the taxpayer pursuant to section 47 of the  
9 internal revenue code with respect to a qualified rehabilitation is  
10 recaptured pursuant to subsection (a) of section 50 of the internal  
11 revenue code, a portion of the credit allowed under this subsection must  
12 be added back in the same taxable year and in the same proportion as the  
13 federal recapture.

14 (4) The credit allowed under this subsection for any taxable year  
15 shall not reduce the tax to less than the dollar amount fixed as a mini-  
16 imum tax by subsection (b) of section fourteen hundred fifty-five of this  
17 article. However, if the amount of credit allowed under this subsection  
18 for any taxable year reduces the tax to such amount, any amount of cred-  
19 it thus not deductible in such taxable year shall be treated as an over-  
20 payment of tax to be credited or refunded in accordance with the  
21 provisions of section one thousand eighty-six of this chapter. Provided,  
22 however, the provisions of subsection (c) of section one thousand eight-  
23 y-eight of this chapter notwithstanding, no interest shall be paid ther-  
24 eon.

25 (5) To be eligible for the credit allowable under this subsection the  
26 rehabilitation project shall be in whole or in part located within a  
27 census tract which is identified as being at or below one hundred  
28 percent of the state median family income as calculated as of January  
29 first of each year using the most recent five year estimate from the  
30 American community survey published by the United States Census bureau.

31 (x) Temporary deferral nonrefundable payout credit. (1) Allowance of  
32 credit. A taxpayer shall be allowed a credit, to be computed as provided  
33 in subdivision one of section thirty-four of this chapter, against the  
34 tax imposed by this article.

35 (2) Application of credit. The credit allowed under this subdivision  
36 for any taxable year shall not reduce the tax due for that year to less  
37 than the minimum tax fixed by subsection (b) of section fourteen hundred  
38 fifty-five of this article. However, if the amount of credit allowed  
39 under this subdivision for any taxable year reduces the tax to such  
40 amount, any amount of credit thus not deductible in such taxable year  
41 may be carried over to the following year or years and may be deducted  
42 from the taxpayer's tax for such year or years.

43 (y) Temporary deferral refundable payout credit. (1) Allowance of  
44 credit. A taxpayer shall be allowed a credit, to be computed as provided  
45 in subdivision two of section thirty-four of this chapter, against the  
46 tax imposed by this article.

47 (2) Application of credit. In no event shall the credit under this  
48 section be allowed in an amount which will reduce the tax to less than  
49 the minimum tax fixed by subsection (b) of section fourteen hundred  
50 fifty-five of this article. If, however, the amount of credit allowed  
51 under this section for any taxable year reduces the tax to such amount,  
52 any amount of credit not deductible in such taxable year shall be treat-  
53 ed as an overpayment of tax to be refunded in accordance with the  
54 provisions of section one thousand eighty-six of this chapter, provided  
55 however, that no interest shall be paid thereon.

1     (z) Economic transformation and facility redevelopment program tax  
2 credit. (1) Allowance of credit. A taxpayer shall be allowed a credit,  
3 to be computed as provided in section thirty-five of this chapter,  
4 against the tax imposed by this article.

5     (2) The credit allowed under this subsection for any taxable year will  
6 not reduce the tax due for such year to less than the minimum tax fixed  
7 by paragraph three of subsection (b) of section fourteen hundred fifty-  
8 five of this article. However, if the amount of credit allowed under  
9 this subsection for any taxable year reduces the tax to such amount, any  
10 amount of credit thus not deductible in such taxable year will be treat-  
11 ed as an overpayment of tax to be credited or refunded in accordance  
12 with the provisions of section one thousand eighty-six of this chapter.  
13 Provided, however, the provisions of subsection (c) of section one thou-  
14 sand eighty-eight of this chapter notwithstanding, no interest will be  
15 paid thereon.

16     (aa) Empire state jobs retention program credit. (1) Allowance of  
17 credit. A taxpayer shall be allowed a credit, to be computed as  
18 provided in section thirty-six of this chapter, against the taxes  
19 imposed by this article.

20     (2) Application of credit. The credit allowed under this subsection  
21 for any taxable year will not reduce the tax due for such year to less  
22 than the minimum tax fixed by this article. However, if the amount of  
23 credit allowed under this subsection for any taxable year reduces the  
24 tax to such amount, any amount of credit thus not deductible in such  
25 taxable year will be treated as an overpayment of tax to be credited or  
26 refunded in accordance with the provisions of section one thousand  
27 eighty-six of this chapter. Provided, however, the provisions of  
28 subsection (c) of section one thousand eighty-eight of this chapter  
29 notwithstanding, no interest will be paid thereon.

30     (bb) Minimum wage reimbursement credit. (1) Allowance of credit. A  
31 taxpayer shall be allowed a credit, to be computed as provided under  
32 section thirty-eight of this chapter, against the tax imposed by this  
33 article.

34     (2) Application of credit. The credit allowed under this subsection  
35 for any taxable year shall not, in the aggregate, reduce the tax due for  
36 such year to less than the minimum tax fixed by subsection (b) of  
37 section fourteen hundred fifty-five of this article. However, if the  
38 amount of credit of such credit allowed under this subsection for any  
39 taxable year reduces the tax to such amount, then any amount of credit  
40 thus not deductible shall be treated as an overpayment of tax to be  
41 credited or refunded in accordance with the provisions of section one  
42 thousand eighty-six of this chapter. Provided, however, the provisions  
43 of subsection (c) of section one thousand eighty-eight of this chapter  
44 notwithstanding, no interest shall be paid thereon.

45     § 1460. Declarations of estimated tax. (a) Requirements of declara-  
46 tion. Every taxpayer subject to the tax imposed by subsection (a) of  
47 section fourteen hundred fifty-one of this article shall make a declara-  
48 tion of its estimated tax for the current taxable year, containing such  
49 information as the commissioner of taxation and finance may prescribe by  
50 regulations or instructions, if such estimated tax can reasonably be  
51 expected to exceed one thousand dollars. If a taxpayer is subject to the  
52 tax surcharge imposed by section fourteen hundred fifty-five-B of this  
53 article and such taxpayer's estimated tax under subsection (a) of  
54 section fourteen hundred fifty-one of this article can reasonably be  
55 expected to exceed one thousand dollars, such taxpayer shall also make a  
56 declaration of its estimated tax surcharge for the current taxable year.



1 (b) Definition of estimated tax and estimated tax surcharge. The terms  
2 "estimated tax" and "estimated tax surcharge" mean the amounts which a  
3 taxpayer estimates to be the tax or tax surcharge imposed by subsection  
4 (a) of section fourteen hundred fifty-one of this article or fourteen  
5 hundred fifty-five-B of this article, respectively, for the current  
6 taxable year, less the amount which it estimates to be the sum of any  
7 credits allowable against the tax or tax surcharge, respectively.

8 (c) Time for filing declaration. A declaration of estimated tax and a  
9 declaration of estimated tax surcharge shall be filed on or before June  
10 fifteenth of the current taxable year in the case of a taxpayer which  
11 reports on the basis of a calendar year, except that if the requirements  
12 of subsection (a) of this section are first met:

13 (1) after May thirty-first and before September first of such current  
14 taxable year, the declaration shall be filed on or before September  
15 fifteenth, or

16 (2) after August thirty-first and before December first of such  
17 current taxable year, the declaration shall be filed on or before Decem-  
18 ber fifteenth.

19 (d) Amendments of declaration. A taxpayer may amend a declaration  
20 under regulations of the tax commission.

21 (e) Return as declaration. If, on or before February fifteenth of the  
22 succeeding year in the case of a taxpayer whose taxable year is a calen-  
23 dar year, a taxpayer files its return for the year for which the decla-  
24 ration is required, and pays therewith the balance, if any, of the full  
25 amount of the tax or tax surcharge shown to be due on the return:

26 (1) such return shall be considered as its declaration if no declara-  
27 tion was required to be filed during the taxable year for which the tax  
28 or tax surcharge was imposed, but is otherwise required to be filed on  
29 or before December fifteenth pursuant to paragraph two of subsection (c)  
30 of this section, and

31 (2) such return shall be considered as the amendment permitted by  
32 subsection (d) of this section to be filed on or before December  
33 fifteenth if the tax or tax surcharge shown on the return is greater  
34 than the estimated tax or estimated tax surcharge, as the case may be,  
35 shown on a declaration previously made.

36 (f) Fiscal year. This section shall apply to taxable years of twelve  
37 months other than a calendar year by the substitutions of the months of  
38 such fiscal year for the corresponding months specified in this section.

39 (g) Short taxable period. If the taxable period for which a tax or tax  
40 surcharge is imposed by subsection (a) of section fourteen hundred  
41 fifty-one of this article or section fourteen hundred fifty-five-B of  
42 this article, respectively, is less than twelve months, every taxpayer  
43 required to make a declaration of estimated tax or a declaration of  
44 estimated tax surcharge for such taxable period shall make such a decla-  
45 ration in accordance with regulations of the commissioner of taxation  
46 and finance.

47 (h) Extension of time. The tax commission may grant a reasonable  
48 extension of time, not to exceed three months, for the filing of any  
49 declaration required pursuant to this section, on such terms and condi-  
50 tions as it may require.

51 § 1461. Payments of estimated tax. (a) Every taxpayer subject to the  
52 tax imposed by section fourteen hundred fifty-one of this article must  
53 pay an amount equal to (i) twenty-five percent of the preceding year's  
54 tax if the preceding year's tax exceeded one thousand dollars but was  
55 equal to or less than one hundred thousand dollars, or (ii) forty  
56 percent of the preceding year's tax if the preceding year's tax exceeded

1 one hundred thousand dollars. The amount must be paid with the return  
2 required to be filed for the preceding taxable year or with an applica-  
3 tion for an extension of the time for filing the return. If the preced-  
4 ing year's tax under section fourteen hundred fifty-one of this article  
5 exceeded one thousand dollars and the taxpayer is subject to the tax  
6 surcharge imposed by section fourteen hundred fifty-five-B of this arti-  
7 cle, the taxpayer must also pay with the tax surcharge return required  
8 to be filed for the preceding taxable year, or with an application for  
9 an extension of the time for filing the return, an amount equal to (i)  
10 twenty-five percent of the tax surcharge imposed for the preceding year  
11 if the preceding year's tax was equal to or less than one hundred thou-  
12 sand dollars, or (ii) forty percent of the tax surcharge imposed for the  
13 preceding year if the preceding year's tax exceeded one hundred thousand  
14 dollars.

15 (b) Other installments. The estimated tax or estimated tax surcharge  
16 for each taxable year with respect to which a declaration of estimated  
17 tax or a declaration of estimated tax surcharge, respectively, is  
18 required to be filed under this article shall be paid, in the case of a  
19 taxpayer which reports on the basis of a calendar year, as follows:

20 (1) If the declaration is filed on or before June fifteenth, the esti-  
21 imated tax or estimated tax surcharge shown thereon, after applying ther-  
22 eto the amount, if any, paid during the same taxable year pursuant to  
23 subsection (a) of this section, shall be paid in three equal install-  
24 ments. One of such installments shall be paid at the time of the filing  
25 of the declaration, one shall be paid on the following September  
26 fifteenth, and one on the following December fifteenth.

27 (2) If the declaration is filed after June fifteenth and not after  
28 September fifteenth of such taxable year, and is not required to be  
29 filed on or before June fifteenth of such year the estimated tax or  
30 estimated tax surcharge shown on such declaration, after applying there-  
31 to the amount, if any, paid during the same taxable year pursuant to  
32 subsection (a) of this section, shall be paid in two equal installments.  
33 One of such installments shall be paid at the time of the filing of the  
34 declaration and one shall be paid on the following December fifteenth.

35 (3) If the declaration is filed after September fifteenth of such  
36 taxable year, and is not required to be filed on or before September  
37 fifteenth of such year, the estimated tax or estimated tax surcharge  
38 shown on such declaration, after applying thereto the amount, if any,  
39 paid in respect of such year pursuant to subsection (a) of this section  
40 shall be paid in full at the time of the filing of the declaration.

41 (4) If the declaration is filed after the time prescribed therefor, or  
42 after the expiration of any extension of time therefor, paragraphs two  
43 and three of this subsection shall not apply and there shall be paid at  
44 the time of such filing all installments of estimated tax or estimated  
45 tax surcharge payable at or before such time, and the remaining install-  
46 ments shall be paid at the times at which, and in the amounts in which,  
47 they would have been payable if the declaration had been filed when due.

48 (c) Amendments of declarations. If any amendment of a declaration is  
49 filed, the remaining installments, if any, shall be ratably increased or  
50 decreased (as the case may be) to reflect any increase or decrease in  
51 the estimated tax or estimated tax surcharge by reason of such amend-  
52 ment, and if any amendment is made after September fifteenth of the  
53 taxable year, any increase in the estimated tax or estimated tax  
54 surcharge by reason thereof shall be paid at the time of making such  
55 amendment.

1 (d) Application of installments based on the preceding year's tax. (1)  
2 Any amount paid pursuant to subsection (a) of this section shall be  
3 applied as a first installment against the estimated tax or estimated  
4 tax surcharge, respectively, of the taxpayer for the taxable year shown  
5 on the declaration required to be filed pursuant to section fourteen  
6 hundred sixty of this article, or if no declaration of estimated tax or  
7 a declaration of estimated tax surcharge is required to be filed by the  
8 taxpayer pursuant to such section, any such amount shall be considered a  
9 payment on account of the tax or tax surcharge shown on the return  
10 required to be filed by the taxpayer for such taxable year.

11 (2) Any amount paid pursuant to paragraph four of subsection (c) of  
12 section six hundred fifty-eight of this chapter on behalf of a taxpayer  
13 subject to tax under this article shall be applied against the estimated  
14 tax of the taxpayer for the taxable year shown on the declaration  
15 required to be filed pursuant to section fourteen hundred sixty of this  
16 article, or if no declaration is filed pursuant to such section, any  
17 such amount shall be considered a payment on account of tax shown on the  
18 return required to be filed by the taxpayer for such taxable year.

19 (e) Interest on certain installments based on the preceding year's  
20 tax. Notwithstanding the provisions of section one thousand eighty-eight  
21 of this chapter or of section sixteen of the state finance law, if an  
22 amount paid pursuant to subsection (a) of this section exceeds the tax  
23 or tax surcharge, respectively, shown on the return required to be filed  
24 by the taxpayer for the taxable year during which the amount was paid,  
25 interest shall be allowed and paid on the amount by which the amount so  
26 paid pursuant to such subsection exceeds such tax or tax surcharge, at  
27 the overpayment rate set by the commissioner of taxation and finance  
28 pursuant to section one thousand ninety-six of this chapter, or if no  
29 rate is set, at the rate of six per cent per annum from the date of  
30 payment of the amount so paid pursuant to such subsection to the  
31 fifteenth day of the third month following the close of the taxable  
32 year, provided, however, that no interest shall be allowed or paid under  
33 this subsection if the amount thereof is less than one dollar.

34 (f) The preceding year's tax defined. As used in this section, "the  
35 preceding year's tax" means the tax imposed upon the taxpayer by  
36 subsection (a) of section fourteen hundred fifty-one of this article for  
37 the preceding taxable year, or, for purposes of computing the first  
38 installment of estimated tax when an application has been filed for  
39 extension of the time for filing the return required to be filed for  
40 such preceding taxable year, the amount properly estimated pursuant to  
41 paragraph one of subsection (b) of section fourteen hundred sixty-three  
42 of this article as the tax imposed upon the taxpayer for such taxable  
43 year.

44 (g) Application to short taxable period. This section shall apply to a  
45 taxable period of less than twelve months in accordance with regulations  
46 of the tax commission.

47 (h) Fiscal year. The provisions of this section shall apply to taxable  
48 years of twelve months other than a calendar year by the substitution of  
49 the months of such fiscal year for the corresponding months specified in  
50 such provisions.

51 (i) Extension of time. The commissioner of taxation and finance may  
52 grant a reasonable extension of time, not to exceed six months, for  
53 payment of any installment of estimated tax or estimated tax surcharge  
54 required pursuant to this section, on such terms and conditions as he  
55 may require, including the furnishing of a bond or other security by the  
56 taxpayer in an amount not exceeding twice the amount for which any

1 extension of time for payment is granted, provided, however, that inter-  
2 est at the underpayment rate set by the commissioner pursuant to section  
3 one thousand ninety-six of this chapter, or if no rate is set, at the  
4 rate of six per centum per annum for the period of the extension shall  
5 be charged and collected on the amount for which any extension of time  
6 for payment is granted under this subsection.

7 (j) Payment of installments in advance. A taxpayer may elect to pay  
8 any installment of estimated tax or estimated tax surcharge prior to the  
9 date prescribed in this section for payment thereof.

10 § 1462. Returns. (a) Every taxpayer, as well as every other banking  
11 corporation having an employee, including any officer, within the state,  
12 shall annually on or before the fifteenth day of the third month follow-  
13 ing the close of each of its taxable years transmit to the tax commis-  
14 sion a return in a form prescribed by it setting forth such information  
15 as the tax commission may prescribe and every taxpayer which ceases to  
16 exercise its franchise or to be subject to the tax imposed by this arti-  
17 cle shall transmit to the tax commission a return on the date of such  
18 cessation or at such other time as the tax commission may require cover-  
19 ing each year or period for which no return was theretofore filed. In  
20 the case of a termination year of an S corporation, the S short year and  
21 the C short year shall be treated as separate short taxable years,  
22 provided, however, the due date of the report for the S short year shall  
23 be the same as the due date of the report for the C short year.

24 (b) Every taxpayer shall also transmit such other returns and such  
25 facts and information as the tax commission may require in the adminis-  
26 tration of this article.

27 (c) The tax commission may grant a reasonable extension of time for  
28 filing returns whenever good cause exists. An automatic extension of six  
29 months for the filing of its annual return shall be allowed any taxpay-  
30 er, if within the time prescribed by subsection (a) of this section,  
31 such taxpayer files with the tax commission an application for extension  
32 in such form as said commission may prescribe by regulation and pays on  
33 or before the date of such filing the amount properly estimated as its  
34 tax.

35 (d) Every return shall have annexed thereto a certification by the  
36 president, vice president, treasurer, assistant treasurer, chief  
37 accounting officer or any other officer of the taxpayer duly authorized  
38 so to act to the effect that the statements contained therein are true.  
39 The fact that an individual's name is signed on a certification of the  
40 return shall be prima facie evidence that such individual is authorized  
41 to sign and certify the return on behalf of the corporation. In the case  
42 of an association or publicly traded partnership referred to in para-  
43 graph one of subsection (f) of this section, such certification shall be  
44 made by any person duly authorized so to act on behalf of such associ-  
45 ation or publicly traded partnership.

46 (e) If the amount of taxable income or alternative minimum taxable  
47 income for any year of any taxpayer (including any taxpayer which has  
48 elected to be taxed under subchapter s of chapter one of the internal  
49 revenue code) as returned to the United States treasury department is  
50 changed or corrected by the commissioner of internal revenue or other  
51 officer of the United States or other competent authority, such taxpayer  
52 shall report such change or corrected taxable income or alternative  
53 minimum taxable income within ninety days (or one hundred twenty days,  
54 in the case of a taxpayer making a combined return under this article  
55 for such year) after the final determination of such change or  
56 correction or as required by the commissioner, and shall concede the

1 accuracy of such determination or state wherein it is erroneous. Any  
2 taxpayer filing an amended return with such department shall also file  
3 within ninety days (or one hundred twenty days, in the case of a taxpay-  
4 er making a combined return under this article for such year) thereafter  
5 an amended return with the commissioner which shall contain such infor-  
6 mation as the commissioner shall require. The allowance of a tentative  
7 carryback adjustment based upon a net capital loss carryback pursuant to  
8 section sixty-four hundred eleven of the internal revenue code, shall be  
9 treated as a final determination for purposes of this subsection.

10 (f) (1) For purposes of this subsection, the term "bank holding compa-  
11 ny" means any corporation subject to article three-A of the banking law,  
12 or registered under the federal bank holding company act of nineteen  
13 hundred fifty-six, as amended, or registered as a savings and loan hold-  
14 ing company (but excluding a diversified savings and loan holding compa-  
15 ny) under the federal national housing act, as amended. For purposes of  
16 the preceding sentence, the term "corporation" shall include an associ-  
17 ation, within the meaning of paragraph three of subsection (a) of  
18 section seventy-seven hundred one of the internal revenue code, and a  
19 publicly traded partnership treated as a corporation for purposes of the  
20 internal revenue code pursuant to section seventy-seven hundred four  
21 thereof.

22 (2) (i) Any banking corporation or bank holding company which is exer-  
23 cising its corporate franchise or doing business in this state in a  
24 corporate or organized capacity, and

25 (A) which owns or controls, directly or indirectly, eighty percent or  
26 more of the voting stock of one or more banking corporations or bank  
27 holding companies, or

28 (B) whose voting stock is eighty percent or more owned or controlled,  
29 directly or indirectly, by a banking corporation or a bank holding  
30 company, shall make a return on a combined basis under this article  
31 covering itself and such corporations described in clause (A) or (B) and  
32 shall set forth such information as the tax commission may require  
33 unless the taxpayer or the tax commission shows that the inclusion of  
34 such a corporation in the combined return fails to properly reflect the  
35 tax liability of such corporation under this article. Provided, however,  
36 that no banking corporation or bank holding company not a taxpayer shall  
37 be subject to the requirements of this subparagraph unless the tax  
38 commission deems that the application of such requirements is necessary  
39 in order to properly reflect the tax liability under this article,  
40 because of intercompany transactions or some agreement, understanding,  
41 arrangement or transaction of the type referred to in subsection (g) of  
42 this section.

43 (ii) In the discretion of the tax commission, any banking corporation  
44 or bank holding company which is exercising its corporate franchise or  
45 doing business in this state in a corporate or organized capacity, and

46 (A) which owns or controls, directly or indirectly, sixty-five percent  
47 or more of the voting stock of one or more banking corporations or bank  
48 holding companies, or

49 (B) whose voting stock is sixty-five percent or more owned or  
50 controlled, directly or indirectly, by a banking corporation or a bank  
51 holding company, may be required or permitted to make a return on a  
52 combined basis under this article covering itself and such corporations  
53 described in clause (A) or (B) and shall set forth such information as  
54 the tax commission may require; provided, however, that no combined  
55 return shall be required or permitted unless the tax commission deems  
56 such report necessary in order to properly reflect the tax liability



1 under this article of any one or more of such banking corporations or  
2 bank holding companies.

3 (iii) In the discretion of the tax commission, banking corporations or  
4 bank holding companies which are sixty-five percent or more owned or  
5 controlled, directly or indirectly, by the same interest may be permit-  
6 ted or required to make a return on a combined basis under this article  
7 and shall set forth such information as the tax commission may require,  
8 if at least one such banking corporation or bank holding company is  
9 exercising its corporate franchise or doing business in this state in a  
10 corporate or organized capacity. No combined return shall be required or  
11 permitted unless the tax commission deems such report necessary in order  
12 to properly reflect the tax liability under this article of any one or  
13 more of such banking corporations or bank holding companies.

14 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
15 holding company exercising its corporate franchise or doing business in  
16 the state may make a return on a combined basis without seeking the  
17 permission of the commissioner with any banking corporation exercising  
18 its corporate franchise or doing business in the state in a corporate or  
19 organized capacity sixty-five percent or more of whose voting stock is  
20 owned or controlled, directly or indirectly, by such bank holding compa-  
21 ny, for the first taxable year beginning on or after January first, two  
22 thousand and before January first, two thousand twenty-three during  
23 which such bank holding company registers for the first time under the  
24 federal bank holding company act, as amended, and also elects to be a  
25 financial holding company. In addition, for each subsequent taxable year  
26 beginning after January first, two thousand and before January first,  
27 two thousand twenty-three, any such bank holding company may file on a  
28 combined basis without seeking the permission of the commissioner with  
29 any banking corporation that is exercising its corporate franchise or  
30 doing business in the state and sixty-five percent or more of whose  
31 voting stock is owned or controlled, directly or indirectly, by such  
32 bank holding company if either such banking corporation is exercising  
33 its corporate franchise or doing business in the state in a corporate or  
34 organized capacity for the first time during such subsequent taxable  
35 year, or sixty-five percent or more of the voting stock of such banking  
36 corporation is owned or controlled, directly or indirectly, by such bank  
37 holding company for the first time during such subsequent taxable year.  
38 Provided however, for each subsequent taxable year beginning after Janu-  
39 ary first, two thousand and before January first, two thousand twenty-  
40 three, a banking corporation described in either of the two preceding  
41 sentences which filed on a combined basis with any such bank holding  
42 company in a previous taxable year, must continue to file on a combined  
43 basis with such bank holding company if such banking corporation, during  
44 such subsequent taxable year, continues to exercise its corporate fran-  
45 chise or do business in the state in a corporate or organized capacity  
46 and sixty-five percent or more of such banking corporation's voting  
47 stock continues to be owned or controlled, directly or indirectly, by  
48 such bank holding company, unless the permission of the commissioner has  
49 been obtained to file on a separate basis for such subsequent taxable  
50 year. Provided further, however, for each subsequent taxable year begin-  
51 ning after January first, two thousand and before January first, two  
52 thousand twenty-three, a banking corporation described in either of the  
53 first two sentences of this clause which did not file on a combined  
54 basis with any such bank holding company in a previous taxable year, may  
55 not file on a combined basis with such bank holding company during any  
56 such subsequent taxable year unless the permission of the commissioner

1 has been obtained to file on a combined basis for such subsequent tax-  
2 able year.

3 (B) Notwithstanding any provision of this paragraph other than clause  
4 (A) of this subparagraph, the commissioner may not require a bank hold-  
5 ing company which, during a taxable year beginning on or after January  
6 first, two thousand and before January first, two thousand twenty-three,  
7 registers for the first time during such taxable year under the federal  
8 bank holding company act, as amended, and also elects to be a financial  
9 holding company, to make a return on a combined basis for any taxable  
10 year beginning on or after January first, two thousand and before Janu-  
11 ary first, two thousand twenty-three with a banking corporation sixty-  
12 five percent or more of whose voting stock is owned or controlled,  
13 directly or indirectly, by such bank holding company.

14 (v) A banking corporation doing business in this state solely because  
15 it meets one or more of the tests in subparagraphs (i) through (v) of  
16 paragraph one of subsection (c) of section fourteen hundred fifty-one of  
17 this article (referred to in this subparagraph as the "credit card  
18 bank") will not be included in a combined return pursuant to subpara-  
19 graph (i) of this paragraph with another banking corporation or bank  
20 holding company which is exercising its corporate franchise or doing  
21 business in this state unless the credit card bank or the commissioner  
22 shows that the inclusion of the credit card bank in the combined return  
23 is necessary to properly reflect the tax liability of the credit card  
24 bank, the banking corporation or bank holding company under this arti-  
25 cle. However, any banking corporation that meets one or more of the  
26 tests in subparagraphs (i) through (v) of paragraph one of subsection  
27 (c) of section fourteen hundred fifty-one and was included in a combined  
28 return for its last taxable year beginning before January first, two  
29 thousand eight may continue to be included in a combined return for  
30 future taxable years, provided that once that banking corporation has  
31 been included in a combined return for any taxable year beginning on or  
32 after January first, two thousand eight, it must continue to be included  
33 in a combined return until it obtains the consent of the commissioner to  
34 cease being included in a combined return because the combined return no  
35 longer properly reflects the tax liability under this article of any of  
36 the corporations included in the combined return. Further, the credit  
37 card bank will be included in a combined return with (i) any banking  
38 corporation not subject to tax under this article sixty-five percent or  
39 more of whose voting stock is owned or controlled, directly or indirect-  
40 ly, by the credit card bank, or (ii) any banking corporation or bank  
41 holding company not subject to tax under this article which owns or  
42 controls, directly or indirectly, sixty-five percent or more of the  
43 voting stock of the credit card bank, or (iii) any banking corporation  
44 not subject to tax under this article sixty-five percent or more of the  
45 voting stock of which is owned or controlled, directly or indirectly, by  
46 the same corporation or corporations that own or control, directly or  
47 indirectly, sixty-five percent or more of the voting stock of the credit  
48 card bank, if the corporation or corporations described in clauses (i),  
49 (ii) and (iii) of this subparagraph provide services for or support to  
50 the credit card bank's operations, unless the credit card bank or the  
51 commissioner shows that the inclusion of any of those corporations in  
52 the combined return fails to properly reflect the tax liability of the  
53 credit card bank. For purposes of this subparagraph, services for or  
54 support to the credit card bank's operations include such activities as  
55 billing, credit investigation and reporting, marketing, research, adver-  
56 tising, mailing, customer service, information technology, lending and

1 financing services, and communications services, but will not include  
2 accounting, legal or personnel services.

3 (vi)(A) For purposes of this subparagraph, the term "closest control-  
4 ling stockholder" means the corporation that indirectly owns or controls  
5 over fifty percent of the voting stock of a captive REIT or captive RIC,  
6 is subject to tax under this article, article nine-A or article thirty-  
7 three of this chapter or otherwise required to be included in a combined  
8 return under this article, article nine-A or article thirty-three of  
9 this chapter, and is the fewest tiers of corporations away in the owner-  
10 ship structure from the captive REIT or captive RIC. The commissioner is  
11 authorized to prescribe by regulation or published guidance the criteria  
12 for determining the closest controlling stockholder.

13 (B) A captive REIT or a captive RIC must be included in a combined  
14 return with the banking corporation or bank holding company that direct-  
15 ly owns or controls over fifty percent of the voting stock of the  
16 captive REIT or captive RIC if that banking corporation or bank holding  
17 company is subject to tax or required to be included in a combined  
18 return under this article.

19 (C) If over fifty percent of the voting stock of a captive REIT or  
20 captive RIC is not directly owned or controlled by a banking corporation  
21 or bank holding company that is subject to tax or required to be  
22 included in a combined return under this article, then the captive REIT  
23 or captive RIC must be included in a combined return or report with the  
24 corporation that is the closest controlling stockholder of the captive  
25 REIT or captive RIC. If the closest controlling stockholder of the  
26 captive REIT or captive RIC is a banking corporation or bank holding  
27 company that is subject to tax or otherwise required to be included in a  
28 combined return under this article, then the captive REIT or captive RIC  
29 must be included in a combined return under this article.

30 (D) If the corporation which directly owns or controls the voting  
31 stock of the captive REIT or captive RIC is described in subparagraph  
32 (ii) or (iv) of paragraph four of this subsection as a corporation not  
33 permitted to make a combined return, then the provisions in clause (C)  
34 of this subparagraph must be applied to determine the corporation in  
35 whose combined return or report the captive REIT or captive RIC should  
36 be included. If, under clause (C) of this subparagraph, the corporation  
37 that is the closest controlling stockholder of the captive REIT or  
38 captive RIC is described in subparagraph (ii) or (iv) of paragraph four  
39 of this subsection as a corporation not permitted to make a combined  
40 return, then that corporation is deemed to not be in the ownership  
41 structure of the captive REIT or captive RIC, and the closest control-  
42 ling stockholder will be determined without regard to that corporation.

43 (E) If a captive REIT owns the stock of a qualified REIT subsidiary  
44 (as defined in paragraph two of subsection (i) of section eight hundred  
45 fifty-six of the internal revenue code), then the qualified REIT subsid-  
46 iary must be included in any combined return required to be made by the  
47 captive REIT that owns its stock.

48 (F) If a captive REIT or a captive RIC is required under this subpara-  
49 graph to be included in a combined return with another corporation, and  
50 that other corporation is required to be included in a combined return  
51 with another corporation under other provisions of this subsection, the  
52 captive REIT or captive RIC must be included in that combined return  
53 with those corporations.

54 (G) If the banking corporation or bank holding company that directly  
55 or indirectly owns or controls over fifty percent of the voting stock of  
56 the captive REIT or captive RIC and is the closest controlling stock-

holder 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 minimus, 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 article or article nine-A or article thirty-three of this chapter. In that instance, the captive REIT or captive RIC is subject to the provisions of subdivision five or seven of section two hundred nine 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 that section.

(vii) (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 an overcapitalized captive insurance company, is subject to tax under this article or article nine-A of this chapter or otherwise required to be included in a combined return under this article or article nine-A of this chapter, and is the fewest tiers of corporations away in the ownership structure from the overcapitalized captive insurance company. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(B) An overcapitalized captive insurance company 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 overcapitalized captive insurance company if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under this article.

(C) If over fifty percent of the voting stock of an overcapitalized captive insurance company 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 article, then the overcapitalized captive insurance company must be included in a combined return or report with the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company. If the closest controlling stockholder of the overcapitalized captive insurance company 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 article, then the overcapitalized captive insurance company must be included in a combined return under this article.

(D) If the corporation that directly owns or controls the voting stock of the overcapitalized captive insurance company is described in subparagraph (ii) or (iv) of paragraph four of this subsection 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 or report the overcapitalized captive insurance company should be included. If, under clause (C) of this subparagraph, the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then that corporation is deemed not to be in the ownership structure of the overcapitalized captive insurance company, and the closest controlling stockholder will be determined without regard to that corporation.



1 (E) If an overcapitalized captive insurance company is required under  
2 this subparagraph to be included in a combined return with another  
3 corporation, and that other corporation is required to be included in a  
4 combined return with another corporation under other provisions of this  
5 subsection, the overcapitalized captive insurance company must be  
6 included in that combined return with those corporations.

7 (3) (i) In the case of a combined return, the tax shall be measured by  
8 the combined entire net income, combined alternative entire net income  
9 or combined assets of all the corporations included in the return,  
10 including any captive REIT, captive RIC or overcapitalized captive  
11 insurance company. The allocation percentage shall be computed based on  
12 the combined factors with respect to all the corporations included in  
13 the combined return. In computing combined entire net income and  
14 combined alternative entire net income intercorporate dividends and all  
15 other intercorporate transactions shall be eliminated and in computing  
16 combined assets intercorporate stockholdings and intercorporate bills,  
17 notes and accounts receivable and payable and other intercorporate  
18 indebtedness shall be eliminated.

19 (ii) In the case of a captive REIT required under this subsection to  
20 be included in a combined return, "entire net income" means "real estate  
21 investment trust taxable income" as defined in paragraph two of subdivi-  
22 sion (b) of section eight hundred fifty-seven (as modified by section  
23 eight hundred fifty-eight) of the internal revenue code, plus the amount  
24 taxable under paragraph three of subdivision (b) of section eight  
25 hundred fifty-seven of that code, subject to the modifications required  
26 by section fourteen hundred fifty-three of this article. In the case of  
27 a captive RIC required under this subsection to be included in a  
28 combined return, "entire net income" means "investment company taxable  
29 income" as defined in paragraph two of subdivision (b) of section eight  
30 hundred fifty-two (as modified by section eight hundred fifty-five) of  
31 the internal revenue code, plus the amount taxable under paragraph three  
32 of subdivision (b) of section eight hundred fifty-two of that code,  
33 subject to the modifications required by section fourteen hundred  
34 fifty-three of this article. However, the deduction under the internal  
35 revenue code for dividends paid by the captive REIT or captive RIC to  
36 any member of the affiliated group that includes the corporation that  
37 directly or indirectly owns over fifty percent of the voting stock of  
38 the captive REIT or captive RIC will be limited to the following  
39 percentages: (A) fifty percent for taxable years beginning on or after  
40 January first, two thousand eight and before January first, two thousand  
41 nine; (B) twenty-five percent for taxable years beginning on or after  
42 January first, two thousand nine and before January first, two thousand  
43 eleven; and (C) zero percent for taxable years beginning on or after  
44 January first, two thousand eleven. The term "affiliated group" means  
45 "affiliated group" as defined in section fifteen hundred four of the  
46 internal revenue code, but without regard to the exceptions provided for  
47 in subsection (b) of such section fifteen hundred four.

48 (iii) In the case of an overcapitalized captive insurance company  
49 required under this subsection to be included in a combined return,  
50 entire net income must be computed as required by section fourteen  
51 hundred fifty-three of this article.

52 (4) (i) In no event shall an item of income or expense of a corpo-  
53 ration organized under the laws of a country other than the United  
54 States be included in a combined return unless it is includible in  
55 entire net income or alternative entire net income, as the case may be,



1 nor shall an asset of such a corporation be included in a combined  
2 return unless it is included in taxable assets.

3 (ii) In no event shall a corporation organized under the laws of the  
4 United States, this state or any other state, be included in a combined  
5 return with a corporation organized under the laws of a country other  
6 than the United States.

7 (iii) In no event shall a corporation which has made an election  
8 pursuant to subsection (d) of section fourteen hundred fifty-two of this  
9 article to be subject to the tax imposed by article nine-A of this chap-  
10 ter be included in a combined return for those taxable years for which  
11 it is subject to the tax imposed by article nine-A of this chapter.

12 (iv) In no event shall a corporation whose net worth ratio is less  
13 than five percent and whose total assets are comprised of thirty-three  
14 percent or more of mortgages be included in a combined return for those  
15 taxable years for which its tax is determined pursuant to subparagraph  
16 (ii) or (iii) of paragraph one of subsection (b) of section fourteen  
17 hundred fifty-five of this article.

18 (5) Tax liability under this article may be deemed to be improperly  
19 reflected because of intercompany transactions or some agreement, under-  
20 standing, arrangement or transaction referred to in subsection (g) of  
21 this section.

22 (g) In case it shall appear to the tax commission that any agreement,  
23 understanding or arrangement exists between the taxpayer and any other  
24 corporation or any person or firm, whereby the activity, business,  
25 income or assets of the taxpayer within the state is improperly or inac-  
26 curately reflected, the tax commission is authorized and empowered, in  
27 its discretion and in such manner as it may determine, to adjust items  
28 of income or deductions in computing entire net income or alternative  
29 entire net income and to adjust assets, and to adjust wages, salaries  
30 and other personal service compensation, receipts or deposits in comput-  
31 ing any allocation percentage, provided only that entire net income or  
32 alternative entire net income be adjusted accordingly and that any asset  
33 directly traceable to the elimination of any receipt be eliminated from  
34 assets so as to accurately determine the tax. If however, in the deter-  
35 mination of the tax commission, such adjustments do not, or cannot  
36 effectively provide for the accurate determination of the tax, the  
37 commission shall be authorized to require the filing of a combined  
38 report by the taxpayer and any such other corporations. Where (1) any  
39 taxpayer conducts its activity or business under any agreement, arrange-  
40 ment or understanding in such manner as either directly or indirectly to  
41 benefit its members or stockholders, or any of them, or any person or  
42 persons directly or indirectly interested in such activity or business,  
43 by entering into any transaction at more or less than a fair price  
44 which, but for such agreement, arrangement or understanding, might have  
45 been paid or received therefor, or (2) any taxpayer enters into any  
46 transaction with another corporation on such terms as to create an  
47 improper loss or net income, the tax commission may include in the  
48 entire net income or alternative entire net income of the taxpayer the  
49 fair profits which, but for such agreement, arrangement or understand-  
50 ing, the taxpayer might have derived from such transaction.

51 § 1463. Payment of tax. (a) To the extent the tax imposed by section  
52 fourteen hundred fifty-one of this article shall not have been previous-  
53 ly paid pursuant to section fourteen hundred sixty-one,

54 (1) such tax, or the balance thereof, shall be payable to the tax  
55 commission 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 article shall be payable to the tax commission 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 foregoing provisions of this subsection 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 subsection (c) of section fourteen hundred sixty-two of this article, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of taxation and finance on or before the date such application is filed an amount properly estimated as provided by said subsection the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per cent 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. For the purposes of the preceding sentence:

(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 tax commission may grant a reasonable extension of time for payment of any tax imposed by this article under such conditions as it deems just and proper.

§ 1466. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the tax commission under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 1467. Secrecy required of officials; penalty for violation. (a) Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of taxation and finance, any officer or employee of the department of taxation and finance, or any person who, pursuant to this section, is permitted to inspect any return, or 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 return filed pursuant to this article, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any return required under this article. 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 proceedings in any court, except on behalf of the state or the commissioner of taxation and finance 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 state or the commissioner of taxation and finance is a party or a claimant or on behalf of any party in an action or proceeding under the provisions of this article when the 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

1 evidence so much of said returns or the facts shown thereby as are  
2 pertinent to the action or proceeding and no more. The commissioner of  
3 taxation and finance may, nevertheless, publish a copy or a summary of  
4 any determination or decision rendered after the hearing provided for in  
5 section one thousand eighty-nine of this chapter. Nothing herein shall  
6 be construed to prohibit the delivery to a taxpayer or its duly author-  
7 ized representative of a certified copy of any return filed in  
8 connection with its tax nor to prohibit the publication of statistics so  
9 classified as to prevent the identification of particular returns and  
10 the items thereof, or the inspection by the attorney-general or other  
11 legal representatives of the state of the return of any taxpayer which  
12 shall bring action to set aside or review the tax based thereon, or  
13 against which an action or proceeding under this chapter has been recom-  
14 mended by the commissioner of taxation and finance or the attorney-gen-  
15 eral or has been instituted; or the inspection of the returns of any  
16 taxpayer by the comptroller or duly designated officer or employee of  
17 the state department of audit and control for purposes of the audit of a  
18 refund of any tax paid by such taxpayer under this article, or the  
19 disclosing to a state agency, pursuant to section one hundred seventy-  
20 one-f of this chapter, of the amount of an overpayment and interest  
21 thereon certified to the comptroller to be credited against a past-due  
22 legally enforceable debt owed to such agency and of the name and iden-  
23 tification number of the taxpayer who made such overpayment, or the  
24 disclosing to the commissioner of finance of the city of New York,  
25 pursuant to section one hundred seventy-one-l of this chapter, of the  
26 amount of an overpayment and interest thereon certified to the comp-  
27 troller to be credited against a city of New York tax warrant judgment  
28 debt and of the name and identification number of the taxpayer who made  
29 such overpayment. Returns shall be preserved for three years and there-  
30 after until the commissioner of taxation and finance orders them to be  
31 destroyed.

32 (b) (1) Any officer or employee of the state who willfully violates  
33 the provisions of subsection (a) of this section shall be dismissed from  
34 office and be incapable of holding any public office in this state for a  
35 period of five years thereafter.

36 (2) Cross-reference: For criminal penalties, see article thirty-seven  
37 of this chapter.

38 (c) Notwithstanding any provisions of this section, the tax commission  
39 may permit the secretary of the treasury of the United States or his  
40 delegates, or the proper officer of any other state charged with tax  
41 administration, or the authorized representative of either such officer,  
42 to inspect the returns filed under this article, or may furnish to such  
43 officer or his authorized representative an abstract of any return or  
44 supply him with information concerning an item contained in any return,  
45 or disclosed by an investigation of tax liability under this article,  
46 but such permission shall be granted or such information furnished to  
47 such officer or his representative only if the laws of the United States  
48 or of such other state, as the case may be, grant substantially similar  
49 privileges to the commission or officer of this state charged with the  
50 administration of the tax imposed by this article and such information  
51 is to be used for tax purposes only; and provided further the commis-  
52 sioner of taxation and finance may furnish to the secretary of the trea-  
53 sury of the United States or his delegates such returns filed under this  
54 article and other tax information, as he may consider proper, for use in  
55 court actions or proceedings under the internal revenue code, whether  
56 civil or criminal, where a written request therefor has been made to the

1 commissioner of taxation and finance by the secretary of the treasury or  
2 his delegates provided the laws of the United States grant substantially  
3 similar powers to the secretary of the treasury or his delegates. Where  
4 the commissioner of taxation and finance has so authorized use of  
5 returns or other information in such actions or proceedings, officers  
6 and employees of the department of taxation and finance may testify in  
7 such actions or proceedings in respect to such returns or other tax  
8 information.

9 (d) Notwithstanding the provisions of subsection (a) of this section,  
10 the tax commission may permit the officer charged with the adminis-  
11 tration of a tax on or measured by income imposed by any city of the  
12 state of New York, or the authorized representative of such officer, to  
13 inspect the returns filed under this article, or may furnish to such  
14 officer or his authorized representative an abstract of any such return  
15 or supply information concerning an item contained in any such return,  
16 or disclosed by any investigation of tax liability under this article,  
17 but such permission shall be granted or such information furnished to  
18 such officer or his representative only if the local laws of such city  
19 grant substantially similar privileges to the commission or officer of  
20 this state charged with the administration of the tax imposed by this  
21 article and such information is to be used for tax purposes only; and  
22 provided further the commissioner of taxation and finance may furnish to  
23 such city officer or his delegates and the legal representative of such  
24 city such returns filed under this article and other tax information, as  
25 he may consider proper, for use in court actions or proceedings under  
26 such local law, whether civil or criminal, where a written request  
27 therefor has been made to the commissioner of taxation and finance by  
28 such city officer or his delegates or by such legal representative of  
29 such city, provided the local law of such city grants substantially  
30 similar powers to the city officer charged with the administration of  
31 the city income tax or his delegates. Where the commissioner of taxation  
32 and finance has so authorized use of returns or other tax information in  
33 such actions or proceedings, officers and employees of the department of  
34 taxation and finance may testify in such actions or proceedings in  
35 respect to such returns or other tax information.

36 (e) Notwithstanding the provisions of subsection (a) of this section,  
37 the tax commission, in its discretion, may require or permit any or all  
38 persons liable for any tax imposed by this article, to make payments on  
39 account of estimated tax and payment of any tax, penalty or interest  
40 imposed by this article to banks, banking houses or trust companies  
41 designated by the tax commission and to file declarations of estimated  
42 tax, applications for automatic extensions of time to file returns, and  
43 returns with such banks, banking houses or trust companies as agents of  
44 the tax commission, in lieu of making any such payment directly to the  
45 tax commission. However, the tax commission shall designate only such  
46 banks, banking houses or trust companies as are or shall be designated  
47 by the comptroller as depositories pursuant to section fourteen hundred  
48 sixty-six of this article.

49 (f) Notwithstanding the provisions of subsection (a) of this section,  
50 the commissioner may disclose to a taxpayer or a taxpayer's related  
51 member, as defined in subsection (s) of section fourteen hundred fifty-  
52 three of this article, information relating to any royalty paid,  
53 incurred or received by such taxpayer or related member to or from the  
54 other, including the treatment of such payments by the taxpayer or the  
55 related member in any report or return transmitted to the commissioner  
56 under this chapter.

1     § 1468. Procedural provisions. The provisions of article twenty-seven  
2 of this chapter shall apply to the provisions of this article in the  
3 same manner and with the same force and effect as if the language of  
4 such article twenty-seven had been incorporated in full into this arti-  
5 cle and had expressly referred to the tax under this article, except to  
6 the extent that any such provision is either inconsistent with a  
7 provision of this article or is not relevant to this article.

8     § 2. This act shall take effect immediately and shall apply to taxable  
9 years starting January 1, 2024.